

Case No: HQ15PO3265

Neutral Citation Number: [2018] EWHC 1671 (QB)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/07/2018

Before:

HHJ COE QC SITTING AS A JUDGE OF THE HIGH COURT

Between:

	David Pinkus	<u>Claimant</u>
	- and -	
	Direct Line	<u>Defendant</u>

Mr M Grant (instructed by NewLaw Solicitors) for the Claimant

Mr Audland QC (instructed by DWF LLP) for the Defendant

Hearing dates: 29th, 30th, 31st, January 1st, 2nd, 5th, 6th February and 26th March

JUDGMENT

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HHJ Coe QC:

The Claim

1. This is the claimant's claim for damages for personal injury arising out of a road traffic accident which occurred on 21 August 2012. Liability for the accident has been admitted in full. It occurred on the M4 motorway as the defendant's insured, Mr Pavel Khodak's vehicle moved into the fast lane and into collision with the claimant's vehicle.
2. It is the claimant's case that he has suffered significant psychological/psychiatric

symptoms in consequence of the accident as well as minor physical injury. The diagnosis on which he relies is of post-traumatic stress disorder (“PTSD”) with dissociative symptoms. It is his case that this was a terrifying accident of such a nature as to trigger the PTSD. He says that he lost his job a few weeks later because of the effect of the accident on his performance. He has not worked since apart from somewhat unsuccessful attempts at short-term decorating contracts. He has had a great deal of treatment. His relationships with his family have been significantly adversely affected. He has ongoing difficulties with everyday functioning. His symptoms have worsened over time. His past and future financial loss claim is in the region of £850,000.

3. It is the defendant’s case that Mr Pinkus sustained minor physical injuries in the accident and some short-lived travel anxiety/adjustment disorder which resolved by early 2013. They dispute that the accident was of such severity as to cause PTSD. They contend that the claimant’s claim is exaggerated/fabricated. Any subsequent psychiatric symptoms which I find to be genuine are, on a balance of probabilities due to depression probably caused by the claimant’s family difficulties. The defendant say that the claim is worth no more than £2-3,000 and further, that if I find that the claimant has fabricated/consciously exaggerated his symptoms I should find him to have been fundamentally dishonest within the meaning of s.57 Criminal Justice and Courts Act 2015 and dismiss the claim altogether.

The claimant’s capacity to litigate

4. On 31st January after the first day on which the claimant began to give evidence I gave a ruling on this issue and appointed Mrs Pinkus to be his litigation friend. Attached to this

judgment is my ruling (as amended and approved). For the reasons set out below, having heard all the evidence and reached my conclusions, I find that the claimant does have the capacity to litigate and I revoke the order appointing a litigation friend.

The Defendant's pleaded case

5. A preliminary matter was raised as to whether or not the defendant should be entitled to rely upon their allegations of fundamental dishonesty where the claimant contends that their pleading of the issue was not only late but inadequate. The defence (dated 21.12.15 at 1.105) makes no admissions as to any injuries and indicated the defendant would seek their own medical evidence. It denied that the claimant suffered any diffuse brain injury. Rotational/contre coup forces and/or that the claimant knocked his head are denied, He is put to strict proof of the alleged loss and damage. By the updated counter-schedule dated 11.1.18 (only signed with a statement of truth on the first day of trial) the defendant pleads fundamental dishonesty and sets out some details of the arguments, putting the claimant's credibility, honesty and reliability in issue.
6. This pleading (see 1.24) gives details and particulars, but, as the claimant points out, also refers to matters "to be explored in cross-examination" and contains the phrase in one respect "for example". The claimant says this indicated that there would be other matters which the defendant may rely upon which have not been detailed and therefore the pleading is defective. Further the pleading refers to matters which may arise in cross examination which were not detailed and again the claimant says this is inadequate.
7. The claimant referred me to the speech of Lord Millett in the case of *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2003] 2 AC, stating that

“It is well established that fraud or dishonesty...must be distinctly proved; that it must be sufficiently particularised... The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him... this involves knowing not only that he is alleged to have acted dishonestly but also the primary facts which will be relied on at trial to justify the inference...this is only partly a matter of pleading. It is also a matter of substance”.

8. The defendant referred me to the case of *Howlett v Davies* [2017] EWCA Civ 1696 where the Court of Appeal (see para. 25 et seq.) considered whether a trial judge can find fundamental dishonesty sufficient to displace QOCS without fraud having been alleged in terms in the defence. Newey, LJ. felt that the Three Rivers decision (amongst others) was of limited assistance, in particular because it related to what a claimant rather than a defendant must plead and prove. In brief, other previous decisions were distinguished because in those cases, the thrust of the allegations of dishonesty were not put at all or were a finding of the trial judge without input from the advocates. At para. 31 Newey, LJ said “...the mere fact that the opposing party has not alleged dishonesty in his pleadings will not necessarily bar a judge from finding a witness to have been lying: in fact, judges must regularly characterise witnesses as having been deliberately untruthful even where there has been no plea of fraud ...[and] following the guidance given in *Kearsley v Klarfield* [where a claim is denied] without putting forward a substantive case of fraud, but setting out “the facts from which they would be inviting the ... inference that the plaintiff had not in fact suffered the injuries he asserted” it must be open to the ... judge, assuming the ...points have been adequately explored during the oral evidence, to state....he has concluded (say) that the alleged accident did not happen or that the claimant

was not there”.

9. He went on (para. 32) to say that an insurer could invoke CPR 44.16(1) regardless of whether or not there was any reference to fundamental dishonesty in its pleadings. In *Howlett* counsel for the defendant accepted that he had not used words such as “fraud” or “dishonest” in cross-examination but had said things like “that is not true”, so that the claimants knew what they were facing and that that was sufficient for the District Judge to have been free to make the finding of fundamental dishonesty.
10. From the outset (as set out in the defence) the defendant in this case has denied that the accident occurred as the claimant says and put causation and quantum in issue. In light of the defendant’s stance and, in particular, for example their use of surveillance it has been apparent throughout that the claimant’s credibility was in issue. The stark contrast between the way that he and the defendant value the claim has been known to the claimant throughout. His symptoms have been difficult for any of the experts to explain and the defendant have identified him as either consciously or unconsciously exaggerating. I note that the skeleton argument prepared on behalf of the claimant for the hearing in front of Master Eastman on 19.1.18 set out “The credibility, honesty and reliability of the claimant are in issue”. The issue of fundamental dishonesty is not therefore new although it has not been specifically particularised in the pleadings, until the updated counter-schedule.
11. An allegation of fundamental dishonesty is a serious one with significant consequences. There are costs consequences which can be swingeing. A claimant found to have been fundamentally dishonest runs the risk of contempt proceedings and losing his or her liberty. Following the introduction of s.57 Criminal Justice and Courts Act 2015 even where there is a valid claim, a finding of fundamental dishonesty can cause a claimant to

lose the claim in its entirety. In the same way, of course, that there are these significant consequences for a claimant, there are significant benefits to a defendant who can establish such dishonesty.

12. At the beginning of the trial the claimant applied for a ruling that the defendant should not be allowed to run their case on conscious exaggeration, malingering and fundamental dishonesty. I gave an extemporary ruling allowing the defendant to run these arguments. I expand the ruling now to say that I find that in the circumstances of this case the principles set out by Newey LJ in *Howlett* apply in preference to the principle enunciated in *Three Rivers*. At the beginning of the trial the claimant had known “what he was facing” for some time. He knew he had been subject to surveillance. He knew there were issues in relation to the medical evidence which made conscious exaggeration at least a possibility (including lack of a definitive diagnosis, the unusual pattern of symptoms he was reporting, the failed effort tests, and the dispute about how the accident occurred.) By the time of the trial he knew the detail of the matters in the updated counter schedule and the specific allegations of conscious and gross exaggeration. He had had an opportunity to respond even at that stage, seeking to admit further statements in rebuttal of defence witnesses, including from his son and by seeking to put in evidence of previous convictions, casting doubt on the credibility of one of the defendant’s witnesses. The matters to be put to him in cross-examination would not, in my view, have come as any surprise to him.
13. Moreover, since as in any case and as set out in *Howlett*, it must be open to me, having heard all the evidence, to conclude that the claimant is lying or exaggerating in respect of some of his claim, the case ought to be put squarely to him to allow him to respond. This

must include issues raised in the course of the trial which go to credibility even where they have not been specifically pleaded.

14. However, as I said when I gave my ruling, I would not allow any issue to be raised of which the claimant would not have any sufficient notice and which he might have been able to deal with by way of additional evidence or which the experts would have been able to address, but had not and could not in the course of the hearing. Thus, I made it clear that I would not allow any specific points to be taken or arguments to be run which caused prejudice to the claimant because they came too late and in respect of which he had had no notice and could not deal with them or any such point where the experts would need to consider matters further and/or prepare supplementary opinion/reports/letters which could not fairly be done in the course of the trial.
15. In the event I think there was only one intervention by Mr Grant objecting to a question in cross-examination. As sometimes happens in a hearing of this kind, in fact, the claimant's experts were able to deal, for example, with the issue of capacity overnight and the defendant's experts were able to give their views about the claimant's experts diagnosis of PTSD with dissociative symptoms even though that was raised for the first time in opening/oral evidence. In other words, the trial followed a common pattern where there are several experts and a great deal of oral evidence, namely matters arose and were dealt with without the need for any adjournment. I am satisfied that the defendant's case was fairly and properly put and the claimant and his lay and expert witnesses had full and proper opportunity to respond.
16. As I have said, in any event, it would be open to me to find that the claimant is consciously exaggerating or fabricating his symptoms or malingering and, if appropriate

to make a finding on those/other grounds that he has been fundamentally dishonest. I am not convinced that there is any material difference between “conscious exaggeration”, “fabrication” and “malingering”. I am of the opinion that each involves an allegation of pretending to have an illness or disability or pretending to have greater symptoms of illness or disability to achieve a gain. I say this because at para. 64 of his closing submissions, counsel for the claimant has set out a note taken of my extemporaneous ruling on this issue which is preceded by the suggestion that I may have prohibited defence counsel from putting conscious exaggeration to the claimant. My ruling did not do so. Having heard the evidence and had an opportunity now to read the reports, statements and documents I am satisfied that the defence case alleging dishonesty was justifiably and properly put.

Mr Slater’s previous convictions and the statements in rebuttal

17. Another preliminary matter was whether or not the claimant should be permitted to rely on an unredacted draft of his fifth statement prepared in response to the late-served statement from the defendant’s witness, Mr Slater. In essence, the claimant wished to lead in evidence material which he contends may affect the weight that the court would wish to attach to Mr Slater’s evidence. The material seeks to undermine his credibility. The parties did not agree as to the relevance of this material to the issues before the court.
18. The background to the evidence of Mr Slater upon which the defendant wish to rely is that the claimant undertook some decorating work and he contends that it was apparent that this was a failure because of his difficulties attributable to the consequences of the accident. The claimant says that his erstwhile friends, Mr Slater and Lord Norbury, with whom he was working were aware of his ongoing problems. In response, the defendant

sought to call evidence from those friends. The claimant's solicitors issued a witness summons in respect of Mr Slater requiring him to produce certain documentation including details of previous convictions. The claimant also drafted statements in rebuttal of this evidence included in which were allegations in particular against Mr Slater purporting to undermine his credibility. Reference is made to the previous convictions amongst other things.

19. Although I have not seen the email, I was told that Mr Slater had contacted the court saying that he objected to the information being put before the court under the summons requiring him to produce the documentation on the basis that it was not relevant. Mr Audland QC on behalf of the defendant acknowledged of course that he does not represent Mr Slater, but invited the court to consider Mr Slater's submissions and so I heard from Mr Slater who simply clarified that he did not consider any previous conviction to be relevant. The matter in fact revolved around one conviction from 2010 for an offence relating to possession of indecent images of children which is not spent because by reason of the length of sentence imposed, the Sexual Harm Prevention Order which accompanied that sentence persists for 10 years.
20. In this case, as identified, issues of credibility are potentially of acute significance if they give rise to a finding of fundamental dishonesty on the part of the claimant. In the circumstances it seemed to me that in light of the defendant's stance, the claimant should be given an opportunity to raise the issues he wished to raise which he says undermine the defendant's witness's reliability. In all the circumstances of this case including the history of the relationship between Mr Slater and the claimant and the attacks made on the claimant's credibility, I formed the view that the fact that Mr Slater has been convicted of

an offence following his not guilty plea is of relevance and so it should be allowed in.

21. Although there was no objection from the parties it is necessary for me to and I do grant permission for them to rely upon the late-served statements, the statements in rebuttal and the consequential supplementary opinions/letters from the relevant experts.

Approach to the evidence

22. Although it has some unusual features, this is a claim for damages for personal injury following a road traffic accident for which liability is admitted without deduction for contributory negligence. I have to decide whether or not the claimant has established, on a balance of probabilities, his case on causation, damage and quantum. To do this I need to assess the credibility of the witnesses and identify the evidence (medical and lay) which I prefer. I do not need to decide every point which has been raised to do that. Indeed, it would not be appropriate to do so since a lengthy rehearsal of the evidence with which the parties are familiar would not benefit them. Nonetheless, I acknowledge that this judgment must deal in greater detail with the evidence than would normally be necessary in a case of this kind, in particular because the claimant relies on an unusual pattern of symptoms, developing and fluctuating over 5.5 years and because the defendant rely on the cumulative effect of the large number of inconsistencies throughout the evidence.
23. I heard evidence over 7 days and there are 10 lever arch files of documents plus supplementary bundles. There is oral/written evidence from 8 lay witnesses, 10 treating clinicians and 8 experts.
24. Although I am grateful to both counsel for their helpful written and oral submissions and in particular Mr Grant's detailed chronology, they, too are extensive (for example before

the oral closing submissions hearing, the claimant's counsel provided me with written closing submissions running to some 68 pages). I do not need to repeat them.

25. Mr Grant has compiled a list of some 33 questions which he suggests I should answer/ make findings on. In fact, there are 6 main topics: pre-accident life and mental state; nature of the accident; impact and consequences of the accident for the claimant; diagnosis; claimant's credibility; and quantification of the claim. I deal with those issues below.
26. Given the large volume of documentation not all of which has even been referred to in the course of the trial I invited counsel to direct my attention to any particular passages of the documentation which they wish me to take into account so that I could know which sections or files are not in fact relevant. I can deal with some bundles briefly because they can largely be ignored for the purpose of this judgment,
27. The claimant has been subject to surveillance on behalf of the defendant and I have not been referred to the DVDs or the accounts in Bundle 10 at all. The surveillance seems to be of Mr Pinkus driving an Audi A3 and a Ford Galaxy and visiting the bank, shops and taking the children to school and rugby practice. It seems that he went to a hire shop in October 2017 and hired a hammer drill, a transformer and drill bits.
28. Bundle 5 contains the claimant's full medical records. However, all of the relevant documents in that bundle have been referred to elsewhere and/or are included elsewhere.
29. Volume 8 includes various applications, including the applications relating to Dr Pierce's contact with her colleague (see further below) and the applications relating to the lay witness statements and the information with regard to the pre-accident counselling session

(referred to below).

30. I have not read all of Bundle 7 which contains the full 5 years of Mr Pinkus's Facebook posts. There is a smaller bundle (7a) of the more relevant ones.

Background/pre-accident situation

31. The claimant was born on 16.1.62. He is now 56 years old and was 50 at the date of the accident. Beginning at 1.134 are six witness statements from him. The first one is dated 19 November 2015. He began his career as a sugar broker and then a sugar trader. He worked long hours in a stressful job and earned good money. He met his wife, Cori, and a couple of years later his son Daniel was born. The couple now have three children. At the age of 38 in particular because he was spending large periods of time abroad, the claimant left the trading world and did some work as a runner on a film before the family spent a year in America where he was looking to buy a business. The family returned to the UK and the claimant continued in the film industry and was a second assistant director at the time of the accident. His role involved organizing and casting extras for films and in 2010 and 2011 he worked on the film World War Z. He was then asked to work on Jack Ryan by the first assistant director, Toby Hefferman and developed a working relationship with Nick Shuttleworth.
32. Like the job as a trader, the claimant's work in the film industry was high pressured and could be stressful. He was often away from home. The work was contract based relating to a particular film and so he was not working all year round.
33. He had had some health issues some of which were probably related to stressful work, lifestyle and perhaps some earlier experiences. They are identified in the claimant's

chronology. He had a duodenal ulcer in his mid-teens and at the age of 24 felt tired and dispirited. He is described as a very anxious young man suffering from a sore throat secondary to cigarette smoking, but he was understandably anxious because his mother had had a form of throat cancer. He was diagnosed with globus pharyngus (a well-recognised symptom of anxiety). In 1997 he felt panicky with fast heart rate and unexplained sweating which were considered to be due to anxiety/pressure probably related to work. He was described as very, very stressed and anxious about his chest pain. Again, it was related to work. He was referred to Dr Roet with regard to stress management in 1997 and on a later occasion asked to be recommended to an alternative counsellor. He still had elements of panic or stress after that. He was described as being short of breath with palpitations and looking pale and tired in 2000. He had further episodes of palpitations and attended casualty in consequence in 2000. It was felt that he was probably suffering from panic attacks. The episode of atrial fibrillation was considered to be due to exhausting and unsocial work hours in combination with varying dietary factors. He was described as suffering generalised anxiety disorder in 2002 and was prescribed medication for that until 2003. He was diagnosed with anxiety again in 2006. He was advised to improve his lifestyle and lose weight following a diagnosis of reflux oesophagitis in 2008. He had addressed some of those issues when seen again and his Barrett's oesophagus was regularly monitored and was reasonably well controlled. I note that he also had surgery to his right shoulder following a skateboarding accident.

34. Thus, Mr Pinkus has a well-documented history of being vulnerable to stress and anxiety for which he has sought medical intervention. I accept that there had been no such recorded difficulties for a period of six years prior to the accident.

35. In his statement Mr Pinkus describes himself as having had a great memory before the accident including the small details. He said he had "loads of energy". He was a highly capable problem solver (his own words) and was "great with people".
36. I heard from the claimant's wife, Mrs Cori Pinkus. Her statements begin at 1.213 and are dated January 2016, 20 December 2016, July 2017 and December 2017. She speaks in glowing terms of the claimant, his career, his personality, their relationship and his relationship with his children pre-accident.
37. The claimant called Mr Shuttleworth. His statement is at 1.245. Mr Shuttleworth had previously worked with the claimant and liked him. He described him as being personable and approachable and someone who did the job professionally. Having worked on one film, Mr Shuttleworth offered him the chance to work on another film on location in Morocco. He describes his work there as outstanding. He worked with the claimant again and with Toby Hefferman on World War Z. Again, there were periods spent on location in Malta and Hungary. Mr Shuttleworth in his statement says that if the claimant was free and able he would want to work with him "tomorrow".
38. In Bundle 9 there are some character references or testimonials as to the quality of Mr Pinkus's work as an assistant director dealing with crowds. There seems to be no doubt about the fact that he was very good at his job and known to be very good at his job and valued by those he worked with.
39. However, I find that he was at the time of the accident subject to significant stressors at home and at work. There were difficulties with his son's behaviour. I find that this went significantly beyond the usual teenage behaviour which can give rise to family tensions.

The details are set out in Mr Alishan's notes, the statements and evidence of Mr Slater and Lord Norbury and Daniel himself. The problems with Mr Pinkus's son as described to Mr Slater in particular are very significant. This evidence clearly indicates that there were extremes of behaviour which would have been very worrying indeed and which seem to have been unmanageable. From Mr Pinkus's perspective looking at the records it would seem that this caused him personally some specific additional stress because it resonated with him in light of the problems he seems to have had with his mother and addiction issues. I find that this gave rise to serious arguments between Mr and Mrs Pinkus which again went beyond the usual family frictions.

40. I find that he and Mrs Pinkus sought the advice of a counsellor specialising in teenage behavioural difficulties and that this is a reflection of the fact that these difficulties were out of the ordinary. Whether or not Mrs Pinkus is a particular "fan" of counselling does not seem to me to affect the importance of this help being sought. I find that they were already approaching some sort of crisis point.
41. I find that Mr and Mrs Pinkus have been deliberately obstructive in failing to identify the counsellor they saw in consequence of these problems with Daniel. I do not accept that between the two of them they were completely unable to remember the counsellor's details or at least enough of his name and address or description to enable him to be traced. Mrs Pinkus provided some additional information in the witness box which itself, had it been provided earlier, might have been of assistance. Their obstructive behaviour in this regard causes me to be even more firmly of the view that this counsellor's notes would have indicated that the problems with their son were significant.

The accident

42. In relation to the accident circumstances the claimant says (1.157 para. 25) that he was driving at about 70 miles an hour in the outside westbound lane of the M4 when he noticed Mr Khodak's Mercedes enter the nearside lane from the M25 slip road. He says the Mercedes was travelling faster than any other vehicle on a motorway and probably close to 100 miles an hour. He says that in one continuous movement Mr Khodak, without indicating, cut across from the slip road over all three lanes of the motorway and into the outside lane. He says that he executed the manoeuvre at such an acute angle that the rear offside of the Mercedes struck the front nearside of the claimant's vehicle. It happened in seconds. He says that the contact caused a loud bang and his car was pushed towards the central reservation and "for what seemed like an eternity" Mr Khodak's vehicle continued to push the front of his Audi towards the barrier. The claimant says he fought desperately with the steering wheel with all his strength to avoid colliding with the barrier. The claimant also says he had to do an emergency stop and his next memory is of sitting in his car on the hard shoulder. He does not know and has never been able to remember how he got there. He became aware of Mr Khodak tapping on the window. Mr Khodak apologised repeatedly and the claimant responded angrily asking him if he realised that he had nearly killed them both. It is the claimant's case that Mr Khodak offered to call the claimant an ambulance twice because he said the claimant did not look well. The claimant says that eventually they exchanged contact details and the claimant continued on to work.
43. It is the claimant's case that he believed that he was about to suffer a fatal injury. He describes it as "terrifying" and that he went into a deep sense of shock after the accident. He says, "my life since has almost passed me by as if I were a bystander watching it from the outside, a phenomenon my counsellor told me is called disassociation".

44. In the preliminary schedule of loss at 1.98 it was set out that the claimant was subject to violent deceleration and rotational forces in the accident. It was pleaded in that document that when he found himself on the hard shoulder his vehicle was facing the wrong direction (the document is signed with a statement of truth). In his oral evidence he confirmed that he did not hit the central reservation although he felt that he was going to. Nonetheless, the updated schedule of loss at 1.1 states at para. 38 that he was "pushed into the central reservation". He said that he was pushed into and towards the central reservation, but that "does not mean" that he hit a barrier. When taken to the document prepared by the psychotherapist Sally Dean which records him saying he did hit the barrier, he said that he "very much doubted" if he would have explained to her that he hit the crash barrier. He said that his car was not damaged on the right-hand side. He denied telling the witness, Mr Slater, that he had crashed into the barrier. Having said that he did not remember whether or not he came to a complete stop, in his oral evidence for the first time the claimant said that the motorway came to a stop, saying "the whole of the M4 came to a stop". When pressed he seemed to retract that a little. He agreed that no airbags deployed. The damage to his vehicle was to the front passenger side resulting in a repair bill which included a replacement alloy wheel and left head lamp assembly. Bundle 9 contains the invoice for the repairs totalling £1,421.01 p. The single most expensive item was the replacement alloy wheel.
45. Mr Khodak's statement is at 1.255. He describes joining the M4 motorway travelling down the slip road and joining the inside lane. He says it was about 8.30. He says the usual rush-hour traffic was moving well and he was travelling between 50 and 60 miles an hour. He said that the traffic in the inside lane slowed to exit at the next junction and so he checked his mirror and indicated and moved into the middle lane. He travelled in that lane

for 2 miles. A vehicle, travelling at speed in the outside lane behind him, overtook him at speed and then cut directly in front of him. He says he checked the mirror before moving into the outside lane. He was aware of "a slight brushing sensation" on his rear bumper and realised that he had made contact with the claimant's car. He said there was no bang or jolt and he did not lose control of the car. He looked in his rear-view mirror and saw the Audi. When it was safe to do so he indicated and says that both he and the Audi carefully pulled over the middle and inside lanes of traffic and stopped on the hard shoulder. He says that the claimant remained in his car and was angry and agitated. He noted the damage to the Audi although his own car was virtually unscathed. He said that the emergency services were neither required nor called. He said that later in the day the claimant asked him if the matter could be settled without contacting insurers, but when Mr Khodak received Mr Pinkus's estimate for repairs he said he would prefer his insurance company to deal with it.

46. Mr Khodak has provided a second statement exhibiting photographs taken immediately post-accident which show no visible damage to his vehicle at all.
47. When he gave his oral evidence Mr Khodak said that he travelled in the middle lane for roughly 2 miles. He said that he calculated that by reference to the time rather than the distance. He considered that before the accident they had gone past the Langley turnoff. He said he was travelling between 50 and 60 miles an hour. He acknowledged that his recollection might be getting hazy over time. The action of the third-party vehicle caused him to brake suddenly. He described it as a split-second decision. He was aware of the brushing sensation and it took him a few seconds to realise that there had been contact. He said that his car did not fish tail, although he referred to "stabilising it". He agreed he

might be mistaken about the 2 miles. He says the whole contact lasted an instant, not seconds and the claimant's vehicle remained in control when he saw it in the mirror. The damage to his vehicle was limited to the plastic insert on the bumper. He said it was a very minor accident. He agreed that the accident might have happened earlier than 8.30.

48. Mr Khodak told me that he does about 20,000 miles driving a year for business. He says his preferred style of motorway driving is 70 miles an hour using cruise control. The description given by the claimant is not, he says, the way he drives. He said that he did not drive across four lanes at speed in excess of 70 miles an hour. He said that that would not have been possible. He says it was a minor, small accident. When he and the claimant were on the hard shoulder he said that he noticed that the claimant was in distress and he had to calm him down, saying that it was only a little thing. He said he was stressed, too, because it was the only accident he had ever been involved in. Mr Khodak did not remember offering to call an ambulance. He describes the claimant's manner as normal when he spoke to him on the phone later. He said that the costs presented by the claimant for repairs were exorbitant and so he decided to go through his insurers at that stage. He felt that the accident was his fault.

49. In respect of the nature of the accident I prefer the evidence Mr Khodak. He gave his evidence in a straightforward and patently honest way. The claimant describes being hit by a car travelling at 100 miles an hour when he was travelling at 70. The damage to Mr Khodak's vehicle was negligible and the damage to the claimant's vehicle was very limited. I find that the repair costs reflect the expensive replacement parts. The airbags did not deploy. I accept Mr Khodak's evidence that he could not, on a balance of probabilities, have performed the manoeuvre described by the claimant and come into such minor

contact only with the claimant's vehicle. I accept Mr Khodak's evidence that that is not how he drives. On the balance of probabilities, I find that neither vehicle lost control in particular because there was no collision with any other vehicle on the crowded M4 at rush hour. Both vehicles were able to manoeuvre safely to the hard shoulder. Mr Pinkus has been inconsistent in his account of the accident, but I find that he has consistently exaggerated it. Mr Khodak's reference to stabilising his car refers, in my view, to his recovery from the emergency manoeuvre following the actions of the third-party vehicle.

50. I find that Mr Pinkus has deliberately given the impression that he collided with the crash barrier on previous occasions when speaking to others including medical practitioners. In court for the first time he said that the whole of the M4 motorway came to a halt behind him. That was patently untrue and is a reflection of his exaggeration. It was a later invention.
51. I accept that Mr Khodak is mistaken about the location of the accident because Mr Pinkus would have missed his junction if he was accurate. However, Mr Khodak readily accepted that he might be wrong about the location.
52. Mr Khodak as I find has no interest in the litigation whatsoever and is effectively an independent witness. He has nothing to lose or gain from it. I do not accept that the claimant was subjected to violent deceleration and rotational forces. The accident did not involve rotational forces. I accept that there must have been some degree of braking but "violent deceleration" is not consistent with the damage caused or the lack of impact with other vehicle/objects.
53. However, I do accept that even brushing contact between vehicles in the fast lane of a

motorway travelling at about 70 miles an hour would be alarming. Mr Pinkus has been consistent in saying that he does not remember how he got to the hard shoulder and I accept that. I accept that he was significantly shocked by the incident.

Since the accident

54. On the day of the accident having driven on to work Mr Pinkus posted on Facebook that he had been involved in an incident on the M4 when somebody did not indicate. He described himself as shaken and stirred and honestly not knowing how nobody had gone into the back of him. He said that he thought that he had used up one of his nine lives and that he was pretty shaken. He specifically said that [Mr Khodak] "could have killed us". He acknowledged that it could have been a lot worse. He said it was very, very close.
55. When he went to his GP on 28th August some seven days after the accident (Bundle 5 A1) he was complaining of chest pain. It was on the right side "following a car accident last week". He described driving in the fast lane of the motorway and a man came out and hit the front end of the car. The entry says, "pulled over braked suddenly so seatbelt tight across chest pain despite paracetamol and ibuprofen". On examination no bruising was found but he was tender over the chest wall. Further painkillers were prescribed. He was described as being "very anxious and discussed this. Finds talking helpful". The doctor considered this was a normal response to a traumatic situation. There is no mention of cuts, bruises or whiplash.
56. The claim notification form at 105 (A) (bundle 1) was sent on 11 September 2012. It says that the type of injury suffered was soft tissue whiplash and reads that the claimant "is suffering from severe chest pains, nausea, shock, cuts and bruises". It says that he has

taken no time off work and first sought medical attention on 28 August.

57. A conditional fee agreement funding the claim was apparently entered into on 30 August 2012.
58. On 3 October he went back to his general practitioner who at that point has written "post-traumatic stress disorder". There is reference to the accident five weeks before and the claimant is described as still feeling very stressed and anxious which is worse when driving and "can't cope with driving on motorways". There was one previous episode of anxiety noted some 10 years beforehand following a bereavement for which he took citalopram. The note says that that settled in time. The symptoms described are that the claimant was very stressed and has a generally increased level of anxiety, poor concentration and is more irritable with mild depression probably secondary to the post-traumatic stress disorder and counselling was suggested with the possibility of citalopram if anxiety increased.
59. It is the claimant's case that he became temperamentally so volatile after the accident that he was unable to function effectively "when he attempted to return to work". He said that he "attempted to return to work almost immediately" because that is what he was pre-programmed to do. He said that he could not take time off work because he would have lost his job. He said he began arguing in an unnecessarily aggressive way with his colleagues and became generally disruptive. He said that matters came to a head when he started a furious argument with the key second assistant director and almost came to blows. In his statement he says that "Toby Heffernan, the first assistant director on the project had to ask me to step away from the project".

60. In his oral evidence he said, "it's my case that I couldn't keep my temper and I was fired". He said that he was not fired on the spot. He said that he was employed to do a specific job which was to cast and organise all of the extras for the film. He said that it was not a fixed term contract. He denied being engaged for a period of seven weeks he said the preparation period would be seven weeks and after that would come the filming and that he would usually be there to the very end of filming. He said that the contract document (6.217) which reads "non-consec prep over seven weeks" implies that he would not be in work for five consecutive days over the course of the seven-week period. He said that he was given one week's notice and said that he was fired three weeks after the accident.
61. He says that he has refused offers of work since because he was struggling with emotional issues and he would have been perceived as weak and would have been stigmatised as having emotional problems and set aside.
62. He says that he only very occasionally looked at videos of car accidents on YouTube. He says that he had no choice but to resume driving immediately after the accident because he was in the middle of a production. He drove to and from work which he says exacerbated his symptoms. He said that he had little option but to continue to drive after the accident "and has never claimed otherwise". He said that he was at home and he could not confide in his wife and explain what was happening. He still had to take his children to school. He still had to go shopping.
63. He says that he has had an almost pathological fear of confiding in anyone and is scared even to confide in his family. He has not confided in Cori the full extent of his suffering. He says that he continues to have nightmares including violent nightmares once a week and his wife is aware of those. Sometimes she is woken up or he inadvertently assaults

her. He says that he did eventually tell her how the accident had impacted on his mental health but only after his statement of November 2015 and by the time of the statement of December 2016. He had not told his children at that stage.

64. I find that the claimant drove on to work and continued to drive to work each day until the contract came to an end on 23rd September. This involved him driving on the motorway past the site of the road traffic accident. He has implied or suggested to various people on several occasions that he did not drive to work or past the accident site, or on motorways after the accident. He said in his oral evidence that he was not sure if he had driven. It has been suggested that his wife drove him. I find that he did drive to work on the motorway and his attempts to suggest otherwise are inconsistent with his continuing to work and reflect his exaggeration of the accident and its impact.
65. He describes going to America on a fishing trip in June 2013 saying that Cori was at her wits' end by that stage and contacted his cousin Mickey to invite Mr Pinkus to the US to see "whether he could shake me out of my deep depression and anxiety state". He says that he only drove about 50 miles on the trip and it was a sedate affair and he was able to cope.
66. In a letter dated 13 May 2013 he describes how he had asked his wife to help him set out in as much detail as he could explain what had happened to him since the accident. This was in advance of his second meeting with Dr Wyer. This is a long document beginning at 1.167 apparently typed by Mrs Pinkus who according to the claimant and Mrs Pinkus was completely unaware of the claimant's symptoms at this stage. This is simply incredible. There are details set out in that such as him being unable to drive for the first two weeks after the accident because of the physical pain that he was in. She describes him being left

with joint pain in the shoulders. He described not being able to vacuum because it was too painful. He then described the emotional and psychological difficulties and says that he cannot really explain in words how dramatically the accident has changed his life and mental state. He describes anxiety, palpitations, nausea and feeling like a wet blanket was covering him. He said that he had no energy and could hardly get out of bed and his wife had to threaten him over Christmas that she was going to call the GP unless he surfaced from several days in bed at that time without eating and drinking. Although he described on previous occasions finding it difficult to motivate himself to get up and get on with his jobs he has not previously suggested that he could not do it. He specifically mentions the short-term memory difficulties.

67. Mrs Pinkus says that she became aware of the accident when the claimant called her. He was in tears and said he had thought that he was going to die. She says that he did not talk about it much after that and he had "no obvious physical problem". She says that David lost his job "around Christmas time" having been "kicked off the set". Mrs Pinkus says at para. 27 of her statement that at Christmas 2012 the claimant went to bed for three weeks and barely moved and whilst she initially took him drinks and food he then stopped drinking even tea and water and lost an enormous amount of weight. She said it was a "nightmare" and it has been a nightmare since. She says that it got to the point where she threatened to call the doctor. She says that even though he did get out of bed eventually "it all went downhill from there". She says he has no energy and is constantly miserable and hardly bothers to shave. She describes his appearance as "disgusting". He sleeps all the time and apparently suffers from nightmares and sometimes shouts "slow down" in his sleep. She says that since the accident his memory has been awful so much so that she has to leave him notes/prompts. She says that his appetite and sense of taste have changed

dramatically. She says that having taken their son to school, the claimant then “drives off somewhere”. He spends hours on Facebook. She describes a really miserable husband and a really miserable home life. She describes him spending the whole time in bed when the family were in Australia. They now holiday separately which she looks forward to. She describes him as looking dirty and unwashed and unkempt. She describes him at her work being unable to recall the contents of the children's lunch box on the menu and being unable to add up and work out the cost of the same. The behaviour has caused her to see a doctor and contemplate divorce.

68. She says that the claimant had only recently told her about his problems. She describes the very dramatic "revelation" at the end of 2015 when the claimant told her that he had been diagnosed as having PTSD after the accident. He swore her to secrecy. In her second statement she denies that there were problems with Daniel before the accident. It was nothing more than teenage behaviour. She provided a statement saying she cannot recall any details of the counsellor that they saw apart from the fact that it was in Richmond. In her final statement she says that she and her husband have not shared the same bedroom since September 2016. She describes the ongoing outbursts of temper and anger. She says that the claimant has not changed at all despite the further treatment.
69. In her oral evidence she confirmed that there were some errors in her statements although she said she had read them carefully. She says the statements were made in her own words and not those of the claimant. She confirmed that it is true that the claimant never spoke to her about his problems or spoke about his accident until mid-December 2015 and she had not realised that anything was due to the accident. This is despite her statement (1.228 at para. 14) saying that in 2013 she asked the claimant's cousin to invite him to stay with him

in America "to see whether he could coax him out of his deep depression". She was unaware that any of the difficulties were attributable to the accident until 2015 because he did not tell her that. She said that the information about the nightmares was "her experience" and not information she had from the claimant. She was able to supply more information about the counsellor, in Richmond but then said that she did not know why she had not put that in her statement. The information was quite specific as to the location of the property and the office at the bottom of the garden and the counsellor being male. She said it was not true that Daniel was having serious behavioural problems before the accident, but that his behaviour did get worse after the accident because of the claimant's behaviour. She said that before the accident she would leave reminders about the odd children's event for the claimant but did not have to make lists for him. She said that she does not have to prompt them to get dressed. She denied that there was any lifestyle change in consequence of her opening her business. She denied having discussed her witness statements with the claimant.

70. I do not consider that Mrs Pinkus was straightforward as a witness. I do not accept given the passage of time and the alleged consequences of this accident that she has not discussed matters with the claimant in terms of her statement. It seems to me that there are phrases in the statements which suggest there has been discussion. I find it simply incredible that she would be unaware of her husband's problems and unaware that they were attributable to the accident, if he is and has been genuine. On her own account her husband went from being "brilliant" before the accident to a "nightmare" after it, so she must have been aware of his problems if he was in fact experiencing them. I find that she was not truthful about not being able to remember more details of the counsellor. I certainly find that she would have been able to remember the details she volunteered in

her oral evidence at an earlier stage. Her statement is not consistent with what the claimant told Mr Alishan during the period soon after the accident. Although she says that she did not know that any of the difficulties were attributable to the accident, she nonetheless gives an account of the claimant describing and having nightmares in which he shouts, "slow down". I take the view that Mrs Pinkus has given unreliable and inaccurate evidence entirely in support of her husband and led by what he has told her about the account he is giving.

71. Daniel Pinkus in his witness statement dated 16 January 2018 says, "I have just been made aware that my dad has been suffering from PTSD since his car accident in 2012". He says looking back he can see that his relationship with his father changed. The change in him confused him and came out in anger which turned into depression and snowballed.
72. He remembers the holiday in Australia as being a nightmare. He was referred to CAMHS in June 2013 by the support worker at school. He was involved in self-harm, alcohol abuse, prescription drugs, cough medicine and then cannabis. He acknowledges that he was out of control. He describes his father as being obsessive about things, not going out and being grumpy. Daniel was diagnosed with severe depression and prescribed antidepressants, but he preferred cannabis. He said that his behaviour was out of control. At the time that he made the statement he was seeing a life coach and had stopped smoking cannabis. He considers that he has turned things around now. He said that he felt that he did not have the support from his father when he was in a depressive state. He said that it had "kind of all fallen into place" now that he knows that his father had PTSD.
73. Daniel was 14 at the time of the accident and clearly has had some considerable difficulties and mental issues himself over the past six years. He considers that matters all

broke down during the family trip to Australia at Easter 2013. I consider that Daniel was trying his best to give honest evidence. It is apparent that his behaviour had deteriorated to such an extent before the accident that Mr and Mrs Pinkus had gone to see a counsellor. It is apparent from the evidence of Mr Slater that Daniel's problems were significant and more than simple teenage behaviour, before the accident. That is also apparent from Mr Alishan's notes.

74. I find it incredible that if Mr Pinkus has been displaying the sort of behaviour which he now contends for at home that Daniel even in his own teenage world and with his own teenage difficulties would not have noticed. I think the reason for that is that Mr Pinkus has not been displaying those behaviours at all. In the last year or so when Daniel has been getting his life back on track and has achieved greater maturity it is even more surprising that he has not noticed his father's dramatically deteriorating presentation, if such deterioration is genuine.
75. In the claimant's Facebook posts after the accident, are jokey references to his birthday I think in January and he shares various jokes. He talks about going to the cinema. In June 2013 when he went on his trip to America he described the 1.15 Highway as like NASCAR. He said he was on his way to Ohio hoping to catch some nice king mackerel. He described himself at Cabela's as being "in paradise". He said that the road trip was 700 miles. He recounts how much he and his family enjoy a fireworks display. He has posted pictures from a holiday in Paris with the children. There is no mention of any friction or low mood. He is continuing to see films at the cinema and comment on them. He is sharing with others some of his activities of the more mundane nature such as changing his mobile phone provider. He comments on a Louis Theroux documentary about critical

care at Cedars Sinai Medical Centre which he described as exceptional. He relates it to a similar experience with his parents and describes the programme as managing to capture the difficult question of when to “let go” and when to continue “trying at all cost” to save life. He says that he has never seen a bad Louis Theroux documentary. He continues to comment on issues of the day. He continues to post pictures and accounts of family activities. It is apparent that he has a large circle of friends with whom he communicates throughout this period of time. He refers to a particularly long article dealing with Israel and Gaza. The family seem to have visited Kentucky in 2015 as part of a trip to America including New York and travelling into Canada including Niagara Falls. He refers to Alisa being 13 on the 26th and Louis 7 on 30th August with the jovial comment "holidays in August, eh?".

76. It is apparent that Mr Pinkus continued and continues to post regularly, to have a large circle of friends and to travel abroad including to Bangkok and Thailand. He continues to engage in political and current issues and debates. He continues to be involved in discussions about and interested in the film industry. Some of the posts are illegible but the impression created is of Mr Pinkus and his happy family enjoying everyday activities and sharing them.
77. Bundle 6 contains documents which show that people were still asking Mr Pinkus to work with them in the film industry up to about 2016. It also includes tax returns. It is apparent that Mr Pinkus has an income from the property at Stafford Mansions and from various investments. He refers to projects he is working on about which I heard nothing.
78. Bundle 9 contains some miscellaneous documents including some apparent examples of notes which Mrs Pinkus leaves for Mr Pinkus because of his memory difficulties. They

relate to her instructions to him as to family matters such as picking up and collecting or dropping off the children at various events and some household/social responsibilities. They are not personal to him either in terms of his self-care or any activity relating to him.

79. The statement of Richard James Graham Toller (the seventh Earl of Norbury) is at page 1.273. He was called by the defendant. He is one of Mr Pinkus's former friends and Mr Pinkus worked with him at Stafford Mansions (the decorating job in 2016). At that time, they had known one another for about 10 years. The decorating job lasted for 14 weeks between March and June 2016. Lord Norbury describes Mr Pinkus as trying to wind people up and playing practical jokes, which were unfunny. Mr Pinkus made a point of asking Lord Norbury to warn him when he was going to use the nail gun because "it affect[ed] [him]". It seems that Mr Pinkus was very forceful in his views about Brexit. Lord Norbury says the claimant did not come across as being fragile in his state of mind. He was persistent and insistent and quite aggressive about the Brexit issue. He says the claimant was difficult to work with although that seems to have been related to his not doing the job very well. At the end of the job Mr Pinkus was again persistently difficult about the division of the final payment. Lord Norbury says that he was paying the claimant's expenses to stay in a hotel even though his home was not very far away. He saw no sign of any psychological condition in particular not any PTSD of which Lord Norbury has personal experience following his military service in Northern Ireland.
80. He told me that the claimant mentioned that he had had a car crash about three weeks into the job in 2016 but Lord Norbury thought nothing of it. He agreed that he became fed up with the claimant's banter during the job and about Brexit. Importantly Lord Norbury told me that the claimant was "fantastic" in negotiating the deal to do the work at Stafford

Mansions. He described him as great and doing a lot of the negotiations. He says there was a lot of banter on the job. He did accept that he was surprised when the claimant said he was affected by the noise of the nail gun and told him that he had himself suffered from PTSD after Northern Ireland. He says that the claimant said, "that's my issue as well". He says that the claimant was tiresome, not knowing when to stop in a debate. Lord Norbury's conclusion was that painting and decorating in the building trade is not for the claimant. It is not his forte. He described the claimant as being pretty au fait with everything and he negotiated with the chairman. The falling out they had was because the claimant went on and on and on about Brexit and he got fed up. He said that he did not pursue the query as to why he was paying for a bed-and-breakfast for the claimant given that his home was only 15 to 20 minutes away.

81. I consider Lord Norbury was a straightforward witness. His evidence is reliable and I accept it. It is inconsistent with the claimant's evidence as to: the claimant's financial abilities and negotiating skills (the claimant has said he cannot add up the price of coffee and cake); it is evidence of good cognitive function; it contrasts with the claimant's evidence about his ability to withstand banter; apart from the issue about the noise of the nail gun there is nothing to support any symptoms of PTSD. The position with regard to the bed-and-breakfast supports the idea that the claimant wanted to be away from home for a period of time. In respect of the nail gun I consider its significance is that it was said at a time when the claimant had begun reporting PTSD symptoms. I find this was part of his fabrication of the symptoms.
82. Mr Slater's statement is at 1.285. He has known the claimant since they were at school together and were very close friends. He describes the claimant as a prankster, hilarious

and bright spark and "the life and soul of the party". He saw him only once or twice in 2012 and 2013 and it was only in 2014 that he knew that the accident the claimant had been involved in was a car accident. He first heard any details about it whilst they were both doing a painting and decorating job at Gravesend in May 2014. The description of the accident given to him by the claimant included being pushed into the central barrier. It is Mr Slater's recollection that the claimant told him it was a Jaguar that was involved. He says that the claimant did specifically say that the car scraped along the barrier. Although describing how he felt that the accident could have killed him, Mr Slater says that Mr Pinkus did not seem upset, but was nonchalant, smiling and laughing. Mr Slater did not realise that the claimant had been injured and the claimant did not tell him that he had. Although he was aware that the claimant no longer worked in the film industry which the claimant described as having "a lot of backstabbers", he did not tell Mr Slater it was because of the accident or any injury.

83. Mr Slater was aware that the claimant had problems at home and felt the decorating work might help him. The claimant told him he was thinking of backing out of the job because he had told everybody he could not work and so he did not want to be working. He asked Mr Slater if he would be happy to be contacted by his solicitor and tell his solicitor that he, the claimant, had "changed". Mr Slater described how Mr Pinkus was his normal self, laughing and joking at Gravesend in 2014, but different in 2016. In 2016 Mr Pinkus apparently seemed keen to make some money and he was very focused on the money during the work. Part of the change in the claimant's behaviour was that whilst banter and horseplay are a regular feature of life on building sites and the claimant would be involved in that, at Stafford Mansions it went beyond what was appropriate. He describes the claimant as like a child showing off and "taking things too far". He did some jobs

unnecessarily and some badly. He used wood filler in the walls as well as in the windows. Mr Slater felt this was deliberately done as a wind-up. He painted half a window and then left the other half. The claimant was argumentative.

84. Mr Slater also describes the claimant as working long hours and not having any difficulties with the physical aspects of the job and there was no sign of him losing his temper or becoming angry. He was however quite aggressive and annoying about the Brexit issue. In fact, Mr Slater feels that that is what brought the relationship to an end. Mr Slater had not heard that the claimant was said to be suffering from PTSD. The first time he heard it was when he made his statement in January 2018, although the claimant did ask for a warning when the nail gun was going to be used, he did not know why. Mr Slater describes him as acting as "a bit of a prat". Mr Slater agrees that the claimant was very difficult about the division of the money at the end of the contract.

85. Mr Pinkus was living in the flat at Stafford Mansions between March and May 2014 only going home two or three times. His wife would bring his younger children over to see him, but not Daniel. In 2014 Mr Pinkus told Mr Slater he was having problems with his son Daniel who was staying out, not coming home and disappearing for a week at a time. He had found cannabis belonging to Daniel in the house. The claimant said that this was causing a lot of tension at home. The claimant was angry about that and about the way in which his wife was not backing him up. Apparently, the counsellor they went to see advised a curfew and a front door lock to make Daniel come home earlier. There were times when Daniel would climb up to the claimant's bedroom window to knock to be let in and damage the guttering when climbing up it drunk. He described an occasion when Daniel's door had been locked and Daniel had completely smashed the door to get out. He

had also broken some roof tiles. Mr Pinkus said that he did not want to go home because it felt like a prison and he was looking for reasons to stay away. Compared with his description of the accident, when discussing these issues, the claimant was apparently deadly serious. Mr Slater describes Mr Pinkus spending literally hours talking about the problems with Daniel and talking about the problems at home every day. It seems that there were still a lot of problems with Daniel by 2016 and apparently his behaviour had become a lot worse. Mr Slater was clear that Daniel was the biggest problem in Mr Pinkus' life.

86. In his evidence Mr Slater described to me how on the morning of 28th January, the day before the trial, he received notifications of two missed WhatsApp calls overnight. He has "quiet hours" on his phone so did not hear them during the night. They were from the claimant. He said that the claimant would have had to have navigated to the WhatsApp screen before pressing "call" and so this would have to be consciously done. There was apparently a video call but no message was left.
87. He described with real affection and emotion the David Pinkus he knew before. He said that whilst he seemed to have "the attention span of a goldfish" in 2016 it was not as bad as what he saw when the claimant was giving his evidence in court. Mr Slater said that he was upset and it hurt to see somebody you have had respect for presenting as the claimant was. He said that what he saw was not "the real David". He said that he had no idea about any problems that the claimant had. All he knew about were the problems with his son. The claimant was very candid about Daniel's issues. He repeated that the claimant displayed no symptoms at all whilst doing the working at Gravesend in 2014. He reiterated and confirmed that all the claimant spoke about and all he was concerned about

were the problems at home.

88. I consider Mr Slater to be an honest and credible witness. There is no doubt about the fact that on the two occasions in 2014 whilst at Stafford Mansions (the work on the claimant's flat while the claimant was staying there) and in Gravesend, the claimant displayed no symptoms of any psychiatric or psychological illness, but was clearly very, very concerned and preoccupied about the problems at home. Mr Slater considered the claimant to be a hundred times worse at trial than he was at Stafford Mansions in 2016.
89. I accept Mr Slater's evidence and I find that what he saw in court was the claimant's deliberate exaggeration and fabrication of symptoms which he does not display in real life. I think that issues which arose in 2016 were attributable to the claimant's "over the top" banter and behaviour, his ongoing frustrations with issues at home and his anger over Brexit. I find that the request for a warning about the nail gun was part of claimant's attempt to support his contention (albeit at a much lesser level at that stage) that he had PTSD.
90. The hearsay statement from the claimant's witness, Toby Hefferman is at 1.237. Given the inconsistencies between Mr Hefferman's evidence and that of the claimant, the absence of cross examination is significant and so I give only very limited weight to his evidence. There are striking inconsistencies, particularly in respect of the claimant making errors rather than displaying temper on the Jack Ryan job and the absence of any fight between the claimant and his immediate boss leading to his dismissal. The height of it is at paragraph 14 where he says that he needed to make sure that the claimant was okay and so spoke to him and asked him if he needed to reduce his workload. He says, "we were coming to the end of his part in the project anyway so we decided maybe it was best to

end his involvement on that film". The claimant never explained to him what he was going through. Despite this apparent catalogue of errors Mr Hefferman continued to offer Mr Pinkus work and did so on more than one occasion and was told by the claimant that he was either busy or could not help.

91. I do not consider that this evidence is particularly helpful to the claimant. It does not support his claim to have become temperamentally volatile. It does not support his claim to have been fired following an argument with his immediate boss. It does provide some support for a deterioration in his performance at work, but in light in particular of the evidence of Mr Slater I consider that any distraction from work leading to such errors is more likely than not to have been attributable to the difficulties at home. It is support for the fact that he was on a fixed term contract albeit there is a suggestion that there may have been an opportunity for some further involvement. For reasons I have identified below even had he been offered such further involvement I consider that the claimant would not have accepted it because he was unhappy with his boss, keen to get out of the job and because of the problems at home. The evidence of Mr Hefferman about the absence of any loss of temper or anger on the part of the claimant is further supported by the fact that Mr Shuttleworth offered Mr Pinkus a job in 2013.

Treating clinicians

92. When he attended for physiotherapy Mr Pinkus was complaining about pain at the end of the range of rotation in his cervical spine and some upper limb/shoulder and trapezius pain with stiffness of his thoracic spine. That first report is dated 16th October 2012. The next report of 14 November 2012, states that Mr Pinkus was experiencing less pain in his neck and both arms now but still with some left shoulder and arm pain. On 19 December 2012

he was experiencing no pain in his neck and right arm with left arm movement better but still painful. The note reads "he is driving now".

93. Sally Dean was providing the cognitive behavioural therapy and on 6th December 2012 she reports that the accident occurred "at tremendous speed initially losing control of his vehicle Mr Pinkus managed to drive into the centre barrier and avert a pileup". He is described as sleeping well at night. He was lethargic. He experienced nausea when speaking about the event and at times when a passenger in a car. Mr Pinkus told her that he reluctantly drove locally but had not driven on a motorway since the accident. He experienced tingling toes and fingers along with the nausea and avoided thinking and talking about the accident. His lethargy was interfering with his performing household tasks. He reported an impaired memory and inability to concentrate leading to a reduced tolerance for his 14-year-old son's behaviour leading to specific conflict with his wife. Relations with his two younger children and his wife apart from that he would describe as satisfactory. Mr Pinkus said that he was usually easy-going, but after the accident had been irritable with reduced capacity to deal with frustration leading to the termination of his contract. He was now taking on the childcare of his three children. Given that driving on motorways was an essential part of his work the possibility of returning to work was described as "hampered" at the time. In her report of 16 February 2013 Miss Dean indicated that Mr Pinkus had made progress and that his lethargy was beginning to diminish and that the nausea that accompanied thinking and speaking about the accident had eased. He is described as being now more able to contribute to the daily running of the family household and his constant state of stress and high anxiety arousal was reduced somewhat. He remained anxious at the prospect of motorway driving which was preventing him from working and that he had some physical symptoms of anxiety when

driving locally or as a passenger in a car.

94. Mr Pinkus had some counselling from Mr Alishan whose notes beginning on 7 November are as I find an important contemporaneous record of what Mr Pinkus was reporting. They indicate that Mr Pinkus described having become more confrontational. During the last weeks of his job following the accident he thought about ending it in a way that would mean he would not have to endure his “nasty boss”. “He felt he doesn't want to swallow any more so told him it was his job”. He described “being rammed from the side and having nowhere to go but the carriage divider similar to him taking comments from the side and having nowhere to go and putting up with it. The helpless and powerless feeling that someone else another idiot could do it to you no matter how careful you are”. There were some parenting challenges with his son. Difficult parenting issues were referred to in the second session as were low-energy, being easily able to stay in bed and having no reason to get out of bed. By 21st November he was watching car crashes over and over again according to Mr Alishan.
95. On 28th November he reported an overwhelming sense of his responsibilities at home with the three kids. His wife was leaving after breakfast and he was left with the three school runs, shopping, other duties and caring for them when they are back which was “all new to him”. On 5 December he was doing a one-hour drive which he found tough. He had tingling in his fingers and toes and felt nauseous in heavy traffic but it was not as acute as it had been since August. There were arguments with his son. On 12 December he said that his wife had almost ignored his disclosure that he is not very well. He had moments when he felt it was all too tiring (referring to the fighting and the stress). On 19th December his concerns were about his son. Similarly, on 9th and 16th January when Mr

Pinkus felt that the counselling had been beneficial to him and it was having a beneficial effect at home.

96. On 23rd January he describes himself as forcing himself to drive. He could not find the energy to do things but things were improving with his son. He was forcing himself to get out of bed and his wife had forgotten his counselling session. He had driven the Audi (the accident car) three times since August. There were still problems with his son and he was trying to find a gym to do something "for himself". By 6th February he joined the gym and was looking forward to going to Australia for two weeks over Easter. The tingling was only in his left foot. He was getting on with his paperwork and stuff in February 2013 and dieting and losing weight and he was establishing "a little project for work". He had a job offer for the week of 27 February but decided not to drive the 30 miles to the job because he still did not feel ready.
97. In the period between February and May 2013 Dr Alishan's notes refer to family problems. Mr Pinkus was still suffering from pins and needles in response to a vehicle pulling in front of him and he was reporting short-term memory loss. He said he must have been slightly depressed about the whole thing. He described his wife as finding it hard and being "drawn and skinny". He said that it was easier with the younger ones. This issue seemed to have been with his older son. He said he felt that he no longer had the "wet blanket over his head" by March 2013. The trip to Australia he described as a failure because the problems with Daniel and the family problems were the same. His son was away for a few days and everything was much easier including for his wife. He was concerned about his short-term memory and his symptoms had otherwise calmed down. He could not face writing to his solicitors about the accident and thinking about the

accident was "the worst". In May 2013 he had concerns about his son and issues with contacting solicitors. He felt that the sessions were helpful. He told Mr Alishan about the recommendation for 20 sessions of the clinical psychologist and that the diagnosis was of driving phobia rather than PTSD.

98. On behalf of the claimant I was referred in some detail to some of the reports of the treating doctors. Dr Hopley is a psychiatrist to whom the claimant was referred as part of the rehabilitation provision. This followed on the work done by Ulrike Pickelin who reported a slow but gradual improvement with EMDR but to whom the claimant continued to report significant difficulties with dissociation.
99. Dr Hopley saw the claimant on 23 July 2015. He previously had read Dr Wyer's medicolegal report from May 2013 with the progress reports following psychological therapy (CBT and EMDR).
100. He sets out the claimant's account. It is once again, not consistent with the accounts given elsewhere. The claimant said he had managed to continue at work for some months but following conflict with his direct superior because he was argumentative, less cooperative and more irritable he was fired. He described seeing Mr Alishan but not making any progress in terms of the psychological state. He reported progress with Miss Pickelin was hampered by dissociation. He told Dr Hopley that he often gets "very foggy for a few hours". This was preventing him from working. He said that anger was always "close at hand". The claimant reported and demonstrated suboptimal memory. He reported problems at home with him being irritable and short-tempered "particularly around his sons reading difficulties". Mr Pinkus could not remember the last time he enjoyed anything. He reported huge difficulties with driving and strong feelings of avoidance. He

reported contemplating self-harm immediately after the accident together with some fleeting suicidal thoughts. The claimant gave a limited account of some panic attacks in the aftermath of his mother's death in 2000 which he said were self-limiting and for which he received no formal treatment. He described limited social interaction. Mr Pinkus was, however, able to tell Dr Hopley that the day of the examination was his wedding anniversary. He reported that his son Daniel was conscious of the changes in his father's behaviour and found it difficult to be at ease around him.

101. Mr Pinkus told Dr Hopley that he would not return to driving and was very reluctant to let his wife know the full extent of the psychological difficulties. He described active avoidance of going to the cinema or to the theatre. He reported experiencing intrusive recollections of the accident in the form of nightmares and frequent flashbacks. Dr Hopley concluded that the picture emerging in the last year or more was one of complex post-traumatic stress disorder. He felt that a separate diagnosis of dissociative disorder may be appropriate.

102. I consider that Dr Hopley's report is of limited use in light of the fact that he did not have a complete picture of all the matters which the claimant had reported over the years. Moreover, the account he was being given by the claimant and as set out in his report is inconsistent with the account that the claimant has given elsewhere. I find that from about 2015 the claimant was beginning to report symptoms which are consistent with PTSD including the re-experiencing. However, I consider that the reports of re-experiencing are fabricated and inconsistent in themselves. I find that any diagnosis of PTSD (complex or otherwise) based on the claimant's account is not reliable in consequence.

103. The claimant also refers to the report of Dr El-Leithy, a clinical psychologist to support the

diagnosis that I am invited to find. At 4.232 is Dr El-Leithy's report following meetings with the claimant in February and March 2017. The report is dated 28 March 2017. There are again some serious inconsistencies in the account which Mr Pinkus was giving to Dr El-Leithy in light of some aspects of the evidence elsewhere. He referred apparently to "very occasionally" undertaking casual decorating work. Contrary to the appearance of Mr Pinkus "unshaved" on the second day of trial (and Mrs Pinkus' account of his unkempt state) he apparently presented as reasonably "well-kempt". He was "warm, appropriate and friendly". He was orientated in time, place and person.

104. Mr Pinkus apparently told Dr El-Leithy that two years ago (that is in 2015) and prior to his previous treatment he would have been unable to give Dr El-Leithy a coherent account of the accident itself. That is not consistent with the reports elsewhere. Mr Pinkus was able to concentrate for a 90-minute assessment session. He gave a dramatic account of the accident including being "pushed into the central reservation". He described recurrent nightmares of the accident and struggling to resume driving because of anxiety. He described having severe difficulties reading books, watching television or following conversations. He described unwanted daytime memories of the road traffic accident occurring two or three times a week and almost nightly re-experiencing. He described thrashing out in his sleep and shouting out and disturbing his wife's sleep. Of course, Mrs Pinkus says that they have not slept together since 2016. He reported avoiding driving at busy times on main roads and motorways.

105. Mr Pinkus told Dr Hopley that he was not sure if he had suffered a head injury or lost consciousness in the accident. He said that he had lost interest in almost everything he used to enjoy in particular cinema, books and television and had problems experiencing

positive emotions. He endorsed de-personalisation and de-realisation occurring several times a week and reported that he considered that his son had been harmed by his emotional difficulties and behaviour. Mr Pinkus said that the CBT and EMDR treatment between 2013 and 2014 enabled him to return to driving through a process of graded exposure. It is, however, apparent that he was driving before then. Mr Pinkus apparently described a sudden onset of severe psychological distress and disability after the road accident. Dr El-Leithy considered that the apparent cognitive impairment symptoms including word finding and concentration problems, personality change, irritability and frustration and tolerance were possibly reflective of a mild traumatic brain injury resulting from the rapid deceleration during the accident. He considered that this was less likely given the circumstances of the accident, but the cognitive problems could be accounted for because there was reasonable evidence of peri-traumatic dissociation and enduring post-traumatic dissociative difficulties. Dr El-Leithy still wondered whether there might be some neurological origin. He concluded that capacity was not an issue with the claimant being able to understand and weigh up the possible costs and benefits of treatment.

106. Given the passage of time, the inconsistencies with the other evidence and the fact that Dr El-Leithy's opinion is based upon Mr Pinkus's, self-report it does not seem to me that this opinion lends the claimant the objective and weighty support which is urged on his behalf.

Expert witnesses

107. Some nine days after he saw his GP for the second time, on 12 October 2012 the claimant was seen by Dr Richard Fotiadis for a medical report for the claim. Dr Fotiadis is a general practitioner. The claimant provided his details including the ages of his children and describes himself as a "part-time" film assistant director who had always enjoyed good

health. He described the accident as occurring when his vehicle was travelling at a moderate speed and was hit from the nearside front causing a moderate amount of damage and Mr Pinkus remembered being thrown forwards and backwards and from side to side in the vehicle. He reported generalised anxiety and fear of travel within 24 hours of the accident and that he was very nervous as a driver. It had not prevented him from driving, but made him wary. He had been aware of episodes of tingling in both hands and feet since the accident and said that he had not yet returned to driving on the motorway.

108. He said that he had felt low since the accident and that his partner had noticed a change in mood and behaviour. He reported no past medical history of significant psychological/psychiatric illness. Whilst he was upset talking about the events he appeared well-adjusted with no signs of psychological or psychiatric illness. Dr Fotiadis considered there was no post-traumatic stress disorder and he would recover from his psychological symptoms within 12 months of the date of the accident. He had ongoing pain in the right side of his chest. Examination was normal. Chest pain was expected to last for four months from the date of the accident. He described pain in his left upper arm and shoulder radiating into the forearm. On examination there was diffuse tenderness over the capsule and symptoms were expected to resolve by six months from the date of the accident. Mr Pinkus described pain in the right upper arm/shoulder radiating into the forearm again there was diffuse tenderness across the capsule and a recovery within five months was anticipated.

109. Despite his previous shoulder surgery, the claimant denied any previous significant related symptoms in his right upper arm/shoulder. He said that he had continued to perform domestic duties after the accident without the need for paid or unpaid help although he found it more strenuous, similarly with household duties. He remained unable to take his

children to play in the park by reason of the physical symptoms. His sleep was reduced. He was uncomfortable at work since the accident, but had continued. Driving his children to school caused him anxiety and discomfort from the accident and he was unable to vacuum. He told Dr Fotiadis that his wife had had to collect him from work on occasion. CBT and EMDR were recommended. Physiotherapy treatment was recommended. It was not expected that the accident would have any future effect on the claimant's job prospects.

110. He saw Dr Wyer, a clinical psychologist, on 16th May 2013 some nine months after the accident. She diagnosed anxiety symptoms constituting specific phobia and depressive symptoms warranting a diagnosis of a major depressive episode for three months and an adjustment disorder with depressed mood thereafter. She considered that the symptoms were attributable to the accident and that there had been significant occupational disadvantage. She considered that the symptoms should resolve on completion of recommended specialist psychological treatment. Mr Pinkus had a good recall of the accident and his mental state was intact. He described seeing a black Mercedes hurtling down the slip road and in a split second it had come into the motorway cutting across all three or four lanes and gone straight into him. He was pushed towards the central reservation and struggled to hold his vehicle to prevent side swiping the barrier. He felt shock at the time, but could not think of any possible consequences. He was unable to recall getting to the hard shoulder. He then proceeded to work continuing his journey. He said that he had pain in his shoulders and chest “such that he was unable to drive because of it for the first week” and it was “extremely painful getting in and out of the car for next 3 to 4 weeks”. He had an immediate and acute stress response associated with driving so that he was arriving at work stressed out and whilst driving had nausea and pins and

needles in his hands and feet.

111. He reported that for the first week he was unable to drive himself because of the pain and had to rely on his wife to take him to work which was a 90-minute round trip. When he started driving himself he would try to avoid the motorway. He had poor sleep due to pain and worries about driving to work and felt stressed and trapped, but did not feel he could tell anybody he felt unwell and was not able to do his job. After the accident he felt unable to cope and to his relief he was "let go". He said he did not drive the accident vehicle any more. He described some sort of physical barrier to talking about the accident. By December 2012 he told Dr Wyer that his mood had lowered and it was like having a wet blanket over him so that he could not get out of bed and he was not eating. He said he had to force himself to get up and get going and set himself small tasks every day to achieve. He described his wife as persuasive and supportive. He said he had turned work down because it involved travelling by car. Some psychological therapy was recommended.
112. I heard oral evidence from the claimant's neurologist, Dr Allder. Dr Allder's reports are at 2.95 and 2.130.
113. Dr Allder refers to the accident as being a high velocity incident with side impact to Mr Pinkus' car. There may have been some short lived post-traumatic amnesia. Dr Allder described Mr Pinkus as a high functioning individual albeit with a history of psychological vulnerability. He says that a precise diagnosis has not been reached although a traumatic brain injury is possible. He suggested that a definitive opinion could not be given until Mr Pinkus had been successfully treated for his ongoing psychological symptoms. Mr Pinkus' was able to recount the ages of all three of his children to Dr Allder. Dr Allder struggled to get a sequential order of symptoms, but Mr Pinkus reported to him that he very quickly

started to develop flashbacks in the daytime and particularly at night. He described a “foggy” or “cloudy” feeling. He described a non-existent social life.

114. In his oral evidence he said that he might see 4 or 5 patients like Mr Pinkus a year who end up on a neurology ward because of the symptoms even if the psychiatrists and psychologists have the final say as to the cause. He was trying to assess whether or not the claimant had suffered a brain injury, but despite his attempts to keep Mr Pinkus on track it was almost impossible to keep him answering the questions. In essence he was saying that he has an interest in medically unexplained symptoms which may result from an accident which would be typically not enough to trigger those problems. He has come across such disparity and patients displaying neurological symptoms with no neurological cause.
115. Thus, Dr Alder was willing to accept that there may be a very small number of patients who present with quasi neurological symptoms following a relatively minor trauma. However, he would defer to the psychologists and psychiatrists. Clearly his view is dependent upon the claimant's account being reliable.
116. Dr Alder accepted that any psychiatric injury would be outside his expertise.
117. The defendant's neurologist Dr Britton was not called. His report is at 3.98 and dated 10 January 2017 following examination in October 2016. He set out a detailed account from Mr Pinkus which I do not intend to repeat. I note that Mr Pinkus told Dr Britton that he had stopped going out and travelling. Dr Britton refers to the preliminary schedule of loss in which Mr Pinkus claimed marked cognitive changes characterised by severe impairment of memory that affects not only day-to-day working memory, but also remembering details from his past life in terms of dates, ages and times including his

medical history. It was said that he had difficulty in concentrating on and absorbing written material, had difficulty in organising future projects and a reduced capacity to make decisions. In the interview Dr Britton noted that Mr Pinkus was unable to remember which of his shoulders had been operated on.

118. Dr Britton analyses the evidence in considerable detail. It is his conclusion that there was unlikely to have been any severe decelerating or rotational forces in the index accident sufficient to affect brain function. Furthermore, the symptoms are not typical of traumatic brain injury in particular because they have progressed and fluctuated in severity. In terms of those fluctuations in particular and, as I find, importantly, at page 3.155 Dr Britton sets out some of the inconsistencies in Mr Pinkus's account as to: his ability to remember birthdays and anniversaries; holidays he has taken; his decision-making skills; his driving difficulties; and the fact that he continued in work for some time. Dr Britton concludes that there are inconsistencies in Mr Pinkus's account which cannot be explained on neurological grounds.

119. The joint statement is at 1.46. Importantly in this case Dr Britton and Dr Alder agree that there is no evidence that the claimant suffered a traumatic brain injury in the index accident. He did not lose consciousness. There is no evidence of post-traumatic amnesia and he reported no significant symptoms consistent with neuropsychological sequelae immediately after the index accident. He did not attend hospital and although he was shaken he was able to travel to work. There were no abnormal neurological signs on examination.

120. There was oral evidence from the neuropsychologists, Dr Pierce for the claimant and Dr Kemp for the defendant.

121. Before I consider the evidence of Dr Pierce I should make reference to the matter which arose and which was the subject of the judgement of His Honour Judge Cotter QC which is at 1.133. As set out, the defendant's neuropsychologist, Dr Kemp criticised the claimant in his report in relation to effort in completing some of the battery of tests and also was critical of Dr Pierce because she had not carried out any specific effort testing of the claimant. Dr Kemp also recorded the inconsistencies in the claimant's presentation and complaints and concluded there were no genuine neuropsychological losses. There was a joint discussion between Dr Pierce and Dr Kemp following which Dr Kemp alerted the defendant's solicitors to the fact that following that discussion and in advance of preparing the joint statement Dr Pierce sent an email to Dr Kemp in error addressed to a colleague. It was apparent that Dr Pierce was seeking an opinion and advice from a colleague regarding "various and very specific points" in the joint statement. It did seem that this was not the first discussion with the colleague.

122. HHJ Cotter QC in response to the defendant's' application ordered the disclosure of the exchange of emails between Dr Murphy (the colleague) and Dr Pierce, dismissing the privilege argument. It is apparent that the discussion in particular concerned inconsistencies in the claimant's evidence. I find that it is accurate to say that it is apparent that the learned judge was not entirely satisfied with Dr Pierce's explanation in her statement. He accepted that there was some foundation for concern about a greater involvement by Dr Murphy. He considered that the fact and nature of any peer supervision should have been disclosed and felt it right that Dr Pierce be cross-examined as to the extent of the involvement of her colleague.

123. In his closing submissions on behalf of the defendant Mr Audland QC sets out the

arguments in support of his contention that Dr Pierce was a most unimpressive witness. I agree that her evidence seemed to me to lack the objectivity required of an expert and further lacked thorough analysis. Dr Pierce provided a "formulation" or diagnosis which had not been previously identified until the day of trial. She referred to a paper which was not peer-reviewed and which it seems she had not fully considered. It is apparent that rather than accept and discuss with Dr Kemp the possibility that the claimant might be unreliable she approached a colleague with a view to seeing how to address the inconsistencies in his evidence. Although she had not considered it herself at any previous occasion having seen the claimant give his evidence she concluded that he lacked the capacity to litigate. Her view essentially was that the claimant is genuine and although he reports symptoms which do not fit into or do not fit readily into a particular diagnostic framework, that is not as important as recognising those symptoms. She retracted her view about the capacity to litigate and suggested that all she meant was that he lacked the capacity to give evidence. Her concern about inconsistencies was not compatible with her evidence that she considered the claimant had been significantly consistent as a historian. She was very reluctant indeed to accept that the claimant might not be consistent or reliable. She did ultimately concede that if the claimant was found to be unreliable she could not offer an opinion. It is not necessary to set out the details of Mr Audland QC's careful analysis of the problems in Dr Pierce's evidence.

124. Importantly, she considered that the odd profile of results on Dr Kemp's effort testing could be attributable to the fact that the claimant became more settled and confident as he progressed through the test. This is not in her report or the joint statement. She opined that the claimant's display of anger was new whereas she would expect that display of anger to be consistent since the accident. However, she also went on to suggest that his symptoms

may have got worse over time.

125. It seems that Dr Pierce expressed the view that Mr Pinkus is unlikely to return to employment in part because he has been away for five years from the industry due to ill-health and because he is unlikely to make a complete recovery.
126. Dr Kemp, on the other hand, did not believe that impaired concentration could explain the profile analysis on testing. There were abnormal scores which could not be properly explained. He would not expect the core symptoms of post-traumatic stress disorder to fluctuate, but rather would expect them to be stable. As set out in the joint report Dr Kemp did not consider that multiple effort/symptom validation test failure precluded genuine psychological upset, but felt that Mr Pinkus's clinical presentation was "just too odd with too many inconsistencies" so that it was not possible to make a psychological diagnosis. Mr Pinkus claimed to have such severe memory difficulties for recent events that he could not respond when Dr Kemp administered a standard measure of PTSD. Dr Kemp properly defers to the court to decide whether or not Mr Pinkus is considered to be deliberately exaggerating. In the joint statement I note in particular Dr Kemp says that he finds it difficult to recommend treatment given Mr Pinkus presented with so many implausible symptoms and failed multiple effort tests which confounds a psychological diagnosis.
127. In his oral evidence Dr Kemp referred to the two papers referred to by Dr Pierce and felt that the statistical correction required meant that almost all significance would be lost. He did not consider that the Brand paper which is a review paper which is specifically about a group of patients with complicated traumatic experiences throughout their lives was appropriately analogous to somebody who suffered a single traumatic event like a car crash. Dr Kemp acknowledged that he may have said to Dr Pierce that when there are so

many inconsistencies in Mr Pinkus' evidence he did not know how they could know if they could believe him. Dr Kemp remembered the consultation. He recalled the discrepancies and inconsistencies and he remembered the claimant's presentation with very slow responses and a very long consultation. He considered the claimant was prolix rather than underreporting. He identified that the claimant's memory is normal on testing.

128. In respect of the effort tests I consider that his failing these effort tests is a reflection of the claimant's fabrication and/or exaggeration. I do not accept the opinion of Dr Pierce that he "settled into" testing. I consider that he was deliberately feigning slowness, but was insufficiently expert to achieve consistency. In other words, having decided deliberately to take too long to carry out the first part of the colour word interference test he deliberately took too long to carry out the second part which was harder, failing to appreciate that he was in fact demonstrating better effort at the harder tests. This explanation on the balance of probabilities on the evidence of Dr Kemp is more likely than Dr Pierce's theory.

129. I prefer the evidence of Dr Kemp to Dr Pierce. I found that Dr Pierce was struggling to find a formulation which fitted the claimant adequately and so her opinion was essentially that on the premise that all of his symptoms and his reported symptoms are genuine even though there is no precise formulation, formulation becomes less important than acknowledging that he has these difficulties and this distress and identifying the component parts as reported. Dr Pierce clearly should not have contacted her colleague without making it clear that she had done so, and did not act in accordance with her responsibilities and duties as an expert. That is a significant failing. However, in the context of this case it seems to me to be more important to note that where Dr Kemp was pointing out and relying upon the inconsistencies in the claimant's account in formulating

his own opinion and in discussions for the joint statement, Dr Pierce clearly felt firstly that she needed some advice about how to deal with that in the joint statement and secondly it seems to me that she was being overly willing to find an explanation or way of approaching those inconsistencies which did not allow for any possibility that they might undermine the claimant's credibility or her opinion. Dr Kemp gave his evidence in a fair, balanced and thoughtful way.

130. They had both, before the trial began, expressed the opinion that Mr Pinkus had the mental capacity to manage his finances and this litigation.

131. I heard from the psychiatrists, Dr Howard and Dr Neal.

132. Dr Howard was asked to consider the evidence in relation to the accident. Based on personal experience of an incident on the motorway he attaches no psychiatric significance to Mr Khodak's statement. Dr Neal reiterates his view that the severity of the accident has relevance to the diagnosis of PTSD based on DSM-V and ICD 10. Dr Howard does not regard anxiety with respect to driving as a salient feature of Mr Pinkus's emotional changes following the accident. Dr Neal agrees that there was no significant car/travel anxiety in March 2016. Based on the reports at the time and some of the reports since Dr Neal takes the view that the claimant probably did not develop PTSD. In particular he notes that the claimant reported repeatedly watching car crashes on YouTube which is the opposite of avoidance.

133. Dr Neal expresses the view that any symptoms of PTSD caused by the accident resolved with psychotherapy by December 2014 when the claimant's reported Subject Units of Distress score was 1/10 and the psychological effects of the accident had been processed

and presented no problems. Dr Howard does not discount PTSD having experience of patients who repeatedly expose themselves to compulsive accident viewing. Dr Neal feels that the claimant developed a depressive adjustment disorder in about October 2012 which is less severe than a mild depressive episode. He refers to the Facebook entries showing a wide range of activities undertaken by the claimant between February 2013 and November 2013. He feels that the depressive adjustment disorder probably went into remission in early 2013. The symptoms reported in March 2016 consistent with a moderate depressive episode were, in Dr Neal's opinion, probably caused by increasing family problems which have persisted from before the index accident. He relies upon the notes of Mr Alishan and the fact of the visit to the counsellor. There are accounts throughout the records and notes of family problems/problems with Daniel as a feature of the claimant's difficulties. Dr Howard refers to Mr Alishan's letter in 2016 referring to the claimant's irritability and unsettled state "since the accident". Dr Neal makes the point that "since" is not the same as "because of".

134. Neither Dr Neal nor Dr Howard are able to explain the severity of memory disturbance on entirely psychological grounds. So much so that Dr Howard feels unable to be confident that there is no core disturbance arising from either anatomical damage to the brain sustained in the accident or a physiological dysfunction arising from emotional trauma sustained in the accident. Dr Howard had raised the issue of potential brain injury in light of apparent amnesia following what appears to be a short period of loss of consciousness. Dr Howard considers that there has been evidence of PTSD the severity of which is difficult to assess. However, it had been at least at the severe end of the moderate part of the spectrum. Additionally, he feels that the claimant has developed a depressive illness. They agree that Mr Pinkus has not developed a dissociative disorder. Although he did not

diagnose dissociative symptoms, Dr Neal “notes that the hypothesis of dissociative symptoms has been invoked by some of [the claimant's] treating doctors to try and explain the severity and the bizarre nature of the memory disturbance in which the memory disturbance is the dissociative symptom”.

135. Dr Howard feels it is professionally inappropriate to use Facebook material for diagnostic and assessment purposes.
136. In the joint statement it is agreed that pre-accident, there is a history of episodes of anxiety accompanied by physical symptomatology. They also make the point which is significant in this litigation of course and one of the key issues that Mr Pinkus and his wife attended a counselling session in August 2012 shortly before this accident.
137. Dr Neal has identified in his evidence that whilst acknowledging that PTSD is a condition which does wax and wane over time that is not the case here because the Claimant did not have PTSD for three years prior to being seen by Dr Hopley. Therefore, if Dr Hopley is correct in his assessment of post-traumatic stress disorder then that would be late onset post-traumatic stress disorder and the chances of that occurring following a road traffic accident is less than 0.4%. Dr Neal’s view is based on the statistical occurrence of late onset PTSD in combat victims and therefore the incidence would be less in the circumstances of this case. Thus, he concludes that on the balance of probability it is unlikely that Mr Pinkus suffered from late onset PTSD. Dr Neal’s view is that following the accident Mr Pinkus suffered some post-traumatic stress symptoms (but not the disorder) and some travel anxiety and that at that time he was already suffering from a tendency to and/or the beginnings of low mood because of the problems at home and that as a result of the combination of these events he went on to develop an adjustment

disorder. The consequences of the accident were fully processed and resolved by the end of the treatment by Ulricke Pickelin. He considers that Mr Pinkus's problems with his family are genuine and emotionally felt and have given rise to persisting depressive and amnesic symptoms. These are no longer related to or contributed to by the accident. His diagnosis is depression.

138. If Mr Pinkus is genuine in his presentation, Dr Neal considers that he is significantly worse now than he was when he saw him in 2016.
139. When I asked him about issues of dishonesty/exaggeration he said that if Mr Pinkus's subjective account is unreliable in respect of matters upon which Dr Neal has based his diagnosis then that would affect the diagnosis and it would become uncertain. If I were to find that the totality of Mr Pinkus's evidence is unreliable then Dr Neal would have no opinion because he would be unable to give an opinion in those circumstances.
140. If I were to find that Mr Pinkus has exaggerated his symptoms then Dr Neal would say that against the background of his diagnosis of a depressive illness Mr Pinkus could have deliberately elaborated his symptoms in order to make himself seem worse, but that would not undermine the fundamental diagnosis of depressive illness.
141. I prefer the evidence of Dr Neal to the evidence of Dr Howard. Dr Howard was also unwilling to acknowledge the inconsistencies in the claimant's evidence fully. His clinging on to the possibility of brain injury as an explanation for the symptoms indicated to me that they could not be explained properly otherwise within a psychiatric/psychological formulation/diagnosis. He seemed to me to gloss over the absence of flashbacks at an earlier stage. Although he did not consider that there were any grounds for suggesting that

the claimant had any other stressors than the road traffic accident he nonetheless conceded that factors identified by Mr Alishan excluding the accident would have led him to diagnose a depression due to family stressors.

142. Dr Neal was a careful and thoughtful witness. There were some key aspects of his evidence which I accept and which are such as to fundamentally undermine the claimant's experts' views. First of all, despite his considerable experience he has only come across the PTSD subtype with dissociation after prolonged child abuse or torture. The chances of late onset PTSD following a road traffic accident are infinitesimally small. Further the dissociative amnesia now identified by the claimant's experts is not part of the PTSD subtype. He specifically identified that this was not the sort of accident likely to cause PTSD and the fact of watching car crashes over and over again is not compatible with the diagnosis of PTSD. He was nonetheless willing to accept that there may have been an adjustment disorder or a minor depressive episode or even a more recently arising moderate depressive episode not related to the accident. In other words, he did not discount that there may be genuine aspects to the claimant's complaints. He properly left any issue of malingering to the court. Nonetheless, it was his view that if the claimant is totally unreliable then he has no opinion and would be unable to give an opinion within his expertise.

Discussion and analysis

(i) Credibility, symptoms and diagnosis

143. I remind myself that the burden is on the claimant to prove his case and that he must do so on the balance of probabilities.

144. Apart from my own review of the evidence above, one only needs to read the long summary of the evidence in the case provided by Dr Britton to identify some of the inconsistencies.
145. The claimant's legal advisers (and indeed the defendant's) have proceeded on the basis that the claimant has capacity to litigate. He alleges that he suffers from significant short-term memory loss and other difficulties of memory and recall. He says that his thinking becomes "clouded" or "foggy". The reports identified that these difficulties are significantly exacerbated in stressful situations. It seems that his solicitors have been able to take instructions successfully and without concerns as to capacity albeit with some adjustments in terms of ensuring a calm atmosphere, face-to-face meetings, appropriate cueing and by references to various sections of documents and so on.
146. This trial began on Monday 29th January and Mr Pinkus gave his evidence for most of the following day. I do not need to cite all of the examples but in the course of giving his evidence Mr Pinkus was often angry and loud. He shouted on occasions. He questioned Mr Audland QC (counsel for the defendant)'s right to question him or to challenge his credibility. I had to intervene on occasion. I had to remind him to show respect to the court and Mr Audland QC. I had to remind him that he brings his case.
147. There were parts of his evidence where he was inconsistent. There were parts of his evidence where he said he was simply unable to remember certain events. In the course of his evidence there were occasions when he said that he could not remember either questions he had been asked or things he had said in the course of giving his evidence. For example, he could not recall the question that he had been asked and answered about two questions previously. In response to the claimant's assertion that this case is all about him

obtaining treatment Mr Audland QC reminded him that he is claiming a significant amount by way of damages. The claimant's response was "Am I?". He was referred to the schedule of damages which he said he did not remember having seen recently. It was put to him that he had confirmed the statement of truth on that document at the beginning of his evidence. He did not appear to be able to recollect that.

148. I specifically find that he has exaggerated his symptoms. I find that he has done so consciously. In particular he has given inconsistent accounts of post-traumatic stress disorder symptoms deliberately to relate his ongoing illness to the accident. Additionally, he has exaggerated his memory difficulties. I found his performance in the witness box was unconvincing. I accept that people who have dissociative episodes are likely to be worse under stress and that their ability to remember things may be fluctuating, variable and inconsistent. However, it seemed to me to be noteworthy that Mr Pinkus's memory failed him when he was being asked more challenging questions about his credibility and his memory was clear when he wished to make a point about the extent of his difficulties. He "lost" simple words, but was able to articulate some complex concepts very well e.g. the concept of mitigation of loss.

149. As set out earlier his presentation was so concerning that I felt the need to explore whether or not he had capacity. That was particularly in respect of his apparent inability to remember that he was claiming a significant sum of damages and had confirmed the updated schedule of loss and damage very shortly before. He seemed to me to be a reasonably intelligent man fully aware of the nature of his claim. There were some aspects of his presentation which I find were deliberately staged. Dr Howard was struck by the fact that Mr Pinkus attended the second day of his evidence in court clearly not having

shaved. I noted the same thing. He was otherwise well-dressed and groomed. In light of some of the rest of my findings I consider that this was a deliberate ploy. There is no mention in any of the records or reports of any lack of personal care (apart from in Mrs Pinkus's statement in relation to very shortly after the accident when Mr Pinkus is said to have gone to bed for 3 weeks, which I do not accept is reliable in any event). Similarly, Mr Pinkus made great play of his emotional response to his son putting his arm around him when he had, as he claimed, finally revealed the extent of his ongoing difficulties. Dr Howard and the others in court will not have been aware of the fact that having given his evidence whilst at the back of the court for as long as he stayed there Mr Pinkus's son sat with his arm around his father. He had not done this at the beginning. Again, I consider that this was a show.

150. I cannot and do not find that he has been entirely genuine in light of his unreliability as a witness and the inconsistencies. I do not consider that these can in any event be explained away by dissociative episodes/memory impairment.
151. Throughout his evidence, he was displaying extreme forgetfulness and confusion, but when he wanted to emphasise a point in favour of his case or deny a point being made against him he could be clear, articulate and direct. As just one example of this I would cite his elaborate explanation of the "unintentional" calls to Mr Slater (see further para.153 below). His forgetfulness and confusion were most apparent when he was faced with a difficult question or caught out in an inconsistency.
152. I specifically find that he has deliberately lied about his ability to follow a newspaper or book. He told me that he could not retain the information in a newspaper article and that he would not read a book because he would not retain it. I find that throughout the period

of time with which I am concerned he has been well able to read long articles and absorb, process and retain the information and comment on it. Not only is his credibility undermined, but this is further evidence as I find that his problems are not as great as he has said. I can well understand that the man I saw in the witness box might not be able to read an article. He put on a show of struggling with retaining information from a few minutes earlier. That is not consistent with his activities as evidenced by some of the Facebook posts. It is not consistent with the debates he clearly entered into with Mr Slater and Lord Norbury about the referendum to decide whether or not Britain should leave the EU.

153. I find that there were occasions when he gave his evidence when Mr Pinkus deliberately and consciously lied to me. I find that he lied when he told me how he came to dial Mr Slater's number in the early hours of Sunday morning before the trial. His tale was elaborate (sleeping on the sofa, phone in hand, not being aware of what was going on when he found the phone ringing) and totally implausible. As Mr Slater himself said given that Mr Pinkus had not previously communicated with him via WhatsApp video, Mr Pinkus would have to have navigated to that screen. In light of the contents of his most recent statement it is apparent that Mr Pinkus not only had fallen out with Mr Slater, but had concerns about the likely gist of Mr Slater's evidence. I find that that is why he tried to contact him (his long-term former friend) and I find that he tried to contact him twice. As far as Mr Pinkus would have been aware his call was not answered (because of the "quiet hours" feature) and so as I find he tried again.

154. I find that Mr Pinkus lied to me when he said that he had not told his wife about his illness. First of all, it is completely inconsistent with the account in both of their

statements of the reason for his going on the fishing trip to America. Secondly, it is inconsistent with the note of Mr Alishan about his wife not being sympathetic and the further note about her forgetting about the counselling appointment. I do not accept her evidence on this issue either. It would in my view be impossible for Mrs Pinkus not to have noticed the dramatic change in him (including the suggestion that she drove him to work and that he spent three weeks in bed and did not eat). In any event she wrote the statement for Dr Wyer for him at his dictation detailing his accident-related symptoms.

155. I find that Mr Pinkus was unwilling to accept that he went on a fishing trip and was unwilling to acknowledge to Mr Audland QC in cross-examination that the shop he was referring to on Facebook sold fishing tackle. This was not only a further attempt to minimize his ability to function and exaggerate his difficulties, but also shows he understood perfectly well the significance of what was being put to him.

156. I find that Mr Pinkus showed that he was liable to dishonesty because I find that he did not intend to declare his earnings from the Stafford Mansions job to the Inland Revenue. I do not accept his account. I find that he did not include the sums he had been paid in the first year covered by that period of tax returns. He was then called upon by the defence to produce his most recent tax returns and since he could not avoid disclosing such tax returns they were completed the Saturday before trial and included all of the Stafford Mansions earnings in the second year's accounts. I consider that Mr Pinkus was forced into this position by this litigation and would not otherwise have included those sums in his returns. I do not accept that if he had told his solicitors about his earnings, the details would not have appeared in his statement.

157. Some of these lies are perhaps in respect of peripheral matters, but they cause me to find

that Mr Pinkus is on the whole an unreliable witness. On a balance of probability therefore where there are conflicts between witnesses and/or conflicting histories it seems to me that it is more likely than not that Mr Pinkus is exaggerating or lacking credibility in his account.

158. Despite the overwhelming inconsistencies, the treating clinicians have clearly accepted the account given by Mr Pinkus at face value and attempted to treat him accordingly. The medicolegal experts have found an assessment of his reported problems difficult because there is no normal or recognised pattern. The claimant's experts have sought to explain away inconsistencies whether by reason of fluctuating symptoms or memory problems. Where the defendant's experts have pointed out the inconsistencies they have properly indicated that it is for me to resolve issues of credibility whilst acknowledging that they are hard to explain from a clinical point of view.
159. Dr Howard even when giving his evidence at trial and despite the opinions of the neurologists remains open to the possibility that Mr Pinkus suffered some traumatic brain injury which would better explain the constellation of symptoms he has reported.
160. It seems that since July 2015 the claimant has been reporting symptoms of PTSD to his treating doctors and since October 2015 he has been reporting symptoms of depression which are consistent with a moderate depressive episode.
161. The defendant say that the claimant suffered some mild but not disabling psychological symptoms of anxiety and depressed mood in the form of an adjustment disorder which had resolved wholly or substantially by early 2013 rather than by the end of treatment with Ulricke Pickelin. This is taken from the counter schedule.

162. Mr Pinkus was complaining of a constant tingling in his extremities, impairment of taste and a ringing in his ears and headaches. I accept that there may initially have been some physical manifestations of anxiety when driving, but I find that he has exaggerated/fabricated the impairment of taste and tinnitus or falsely sought to attribute them to the accident.
163. In order to find that on a balance of probabilities he suffered some lesser psychological/psychiatric condition whether attributable in whole or in part to the accident I need to be able to identify from the evidence which I accept, having rejected the claimant's experts' diagnoses, what symptoms would have been caused over what period of time.
164. None of the experts feel that it is appropriate for them to say that he is a malingerer. Dr Neal identified that the gold standard for a diagnosis of malingering is confession. It seems that anything short of that is not a matter which the medical experts consider it is appropriate for them to diagnose.
165. I find that Mr Pinkus has deliberately exaggerated and/or fabricated symptoms which have worsened on his account with the passage of time and which do not fit a particular pattern because they are not genuine. In particular the claimant's account of dissociative processes apart from being an inadequate explanation for his bizarre presentation would (if they are severe as the claimant indicates, giving him such difficulties and distress in respect of his amnesia) amount to a dissociative disorder. Accepting the evidence of Dr Neal, such dissociative disorder cannot be a consequence of the post-traumatic stress disorder. There is no reliable evidence that his mind becomes "foggy" or "cloudy" when he is under stress outside of the litigation process and attendance upon treating and/or reporting clinicians. The dissociative experience scales questionnaires are, as I find, unreliable because they are

subject to the claimant's fabrication and exaggeration. He functions well in life in fact.

166. I accept that he suffered some travel anxiety at the time. I find that he was able to drive to Pinewood Studios for the rest of the time he was working there up until 23rd September and whilst I accept that that would have been uncomfortable for him I do not find that he avoided it.
167. Having considered the Facebook posts in trial bundle 7A in so far as they provide a contemporaneous account of his frame of mind it would seem that he was able to present an entirely normal face to the world. He has been on enjoyable holidays and partaken in normal family activities. He enters into light-hearted and joking banter with friends. He enters into emotionally warm interactions with friends particularly at times of anniversaries and birthdays and so on. He can successfully interact with strangers in foreign countries. He has over the period of years represented in these posts been on various trips and engaged in various activities. He has entered into some more in-depth serious debates on very many issues of politics and political history.
168. I find that the fact that he can put posts on social media in the way that he has and clearly get enjoyment from all sorts of everyday activities is a reflection of the fact that he has fabricated/exaggerated his symptoms and even in the first 6 months they were not as severe as he has depicted and this further supports my conclusion that he has significantly exaggerated and fabricated his difficulties.
169. Dr Neal and Dr Kemp did not draw on Facebook material in reaching conclusions about his psychiatric or neuropsychological diagnosis or formulation. They identified inconsistencies in the account he was giving about his abilities. It is for the court to draw

the inferences and I have done so.

170. I find that he was recovered earlier than Dr Neal believes. By reference to the evidence of Mr Slater about his behaviour in Gravesend and the records. But in any event his travel anxiety had recovered.

171. I am sure the road traffic accident was both objectively and subjectively very alarming. However, as I have found, the claimant has consciously exaggerated the trauma of the incident. There is evidence to suggest that he has been exaggerating the claim from the beginning. He sought medical attention quite quickly complaining of some minor physical symptoms and his claim was notified. He began to report psychological consequences very quickly. Thereafter the picture is less clear. He obtained and attended counselling and various treatments. He has refused further employment after his contract came to an end. On the one hand particularly by reference to Facebook posts he seems to have been living his life normally. On the other hand, by reference to the accounts he has given to the experts and by reference to his presentation in the witness box he is a broken shell of a man unable to do almost anything. I have specifically found that he has been dishonest and has lied to the court. The possibilities therefore are that he has deliberately fabricated over a long period of time in an elaborate way all of the difficulties he complains of. Alternatively, he has suffered some minor consequences of the accident and chosen consciously to exaggerate his symptoms.

172. In consequence of the road traffic accident he suffered a specific short-lived travel anxiety/ adjustment disorder caused by the car crash and the limited physical symptoms. Any psychological psychiatric consequences of the accident had resolved by early 2013. The frustrations and difficulties caused by Daniel and the worsening home situation were

ongoing. They would have been ongoing and continued at the same level in any event. Despite his reports to various doctors he was functioning well (as shown for example, by the Facebook posts in relation to activities and family life and his presentation and demeanour in Gravesend in 2014).

173. During this period, he was pursuing his claim in relation to the accident. Through the intervention of the rehabilitation services provided, he obtained and pursued physiotherapy and counselling followed by CBT and EMDR. I find that he did this in order to further his claim, but additionally he used these counselling/psychological therapies to discuss/work through some of his unrelated issues including those at home, in particular the situation with Daniel.
174. Mr Pinkus has been in high-powered authoritative roles throughout his career and he has enjoyed those roles and excelled at them, albeit at some personal cost to him in terms of medically reportable stress and anxiety. Being challenged or disobeyed by his teenage son combined with his inability to control his son's behaviour would undoubtedly as I find have been difficult for him to deal with. He also, as I find was encountering a difficult situation at work because of his relationship with his boss. These mood changes did not amount to any psychiatric/psychological condition even at the level of stress and anxiety which had taken Mr Pinkus to the doctor in the past.
175. There is a significant gap in time before he began to report symptoms of post-traumatic stress disorder. I consider that those symptoms were reported dishonestly. Resolution of any accident-related adjustment disorder occurred by March 2013. I have no doubt that he has consciously exaggerated his problems. I find that he suffered some minor physical injuries, although I am not clear exactly what they were. The defendant concede that he

did and properly do not seek to resile from that. I accept that he reported seatbelt bruising to his general practitioner. I doubt if physical injuries went beyond that. His reports of the physical injuries to the various clinicians have not been consistent. I find that he has deliberately fabricated symptoms such as tinnitus and altered taste which have no organic cause and are not related to any psychological disorder and certainly not any such disorder connected to the accident.

176. I have reached the clear conclusion that the claimant has not established on the balance of probability that he suffers from post-traumatic stress disorder. He does not suffer from any amnesia or memory failure attributable to dissociation. The consequences of the accident were short-lived. I have no doubt that he has been dishonest. I find that prior to the accident, due to the problems at home in particular problems that were caused by his son Daniel and the consequences for the family generally, his mood was adversely affected and he was feeling under pressure. He had a stressful job and at this time it seems that there was a particular difficulty with one of his managers.
177. I find that the claimant suffered some minor physical injuries and a period of travel phobia which was not sufficient to stop him driving but which did develop into a minor adjustment disorder with anxiety (to which he was vulnerable) and mild depression, resolving by about March 2013.
178. I do not find that he has developed any later onset depression or PTSD. There is no question of the accident having made a material contribution to a disorder arising from a separate cause. If I am wrong, and the claimant did develop some depression/depressive illness from about 2015/2016 causing genuine anger control issues, the same were not caused or contributed to by the accident and the claimant has in any event significantly

exaggerated/fabricated the consequences in terms of dissociative symptoms, memory loss and functioning and has sought dishonestly to blame it on the accident.

(ii) Employment

179. By reference to Mr Alishan's notes it seems to me that there were pre-existing difficulties for Mr Pinkus at work. I do not think that they were necessarily very great but are part and parcel of the pressures that were building up regardless of the accident at the time. I consider that the problems at home made him less able to cope with a stressful job and an apparently difficult manager. I accept that he had been "thriving" on those stresses to some extent until earlier in 2012.

180. On the basis of the evidence of Mr Shuttleworth and the documentary evidence, I consider that Mr Pinkus's contract on Jack Ryan came to a natural end and he was given the standard one week's notice. The claimant has failed to establish on a balance of probabilities that he was fired because of his volatility. Mr Hefferman's evidence does not support that. The further offers of work do not support the suggestion that there were any serious issues with the claimant's work. The claimant's evidence may suggest he was looking for a way out and was pleased the job came to an end. There is inconsistency about whether or not filming had started. If there was any deterioration in his concentration, I find it was due to problems at home and not the travel anxiety.

181. Mr Shuttleworth said that after the accident, he had offered the claimant work which the claimant had refused usually saying that he had some family issue to which he needed to attend.

182. In the circumstances, even if there had been an opportunity for the claimant to do further

work on Jack Ryan I find that he would not have taken it. His pattern of work was on a contract by contract basis with periods when he was not working. I find that he was being candid when he refused work because of family issues. I find that he chose to have time at home because of his work pattern, his wife's new business and importantly because of the difficulties with Daniel. He could have worked had he chosen to. He has chosen not to. His failure to return to work is not due to any sequelae of the accident.

183. I specifically find that the driving phobia did not stop him working. He could and did drive after the accident albeit it caused him anxiety for 6 or 7 months.

Quantum

184. In light of my findings the claimant falls to be compensated by way of general damages for pain, suffering and loss of amenity in respect of the minor physical injuries and a short-lived period of specific travel phobia and minor adjustment disorder. Even in respect of these elements there are some inconsistencies in the claimant's account. I find that reference to the report of Dr Fotiadis provides some help. His opinion is that the superficial soft tissue injury to the claimant's chest would recover by 4 months post-accident. The soft tissue injury to the left upper arm and shoulder would recover by 6 months post -accident. Of course, this was the site of the previous surgery, which Mr Pinkus did not disclose, but in the absence of any helpful evidence it seems to me there might have been an overlaid injury/exacerbation of symptoms. Finally, the soft tissue injury to the right upper arm and shoulder would recover by 5 months post-accident. I note that at the time of this examination 12th October 2012, the claimant was presenting as psychologically/psychiatrically well but with generalised anxiety and a fear of travel.

185. I find that the duration of the specific travel phobia and minor adjustment disorder was some 7 months to March 2013 (for the reasons given)
186. Looking at the Judicial College Guidance (14th Ed) in the minor neck injuries section (which I think is the most analogous) I consider that an appropriate award for pain, suffering and loss of amenity would be £2,000 for the physical injuries and looking at less severe psychiatric damage section would be £2,250 in respect of the psychological difficulties.
187. For the reasons set out above I do not find that the claimant has suffered any past or future loss of earnings attributable to the accident or its consequences. Nor is he handicapped or at any disadvantage on the labour market.
188. He has had no past need for care and assistance in the form of prompting by his wife and will have no future need for any such care or assistance.
189. By their counter schedule, the defendant say that the policy excess will be admitted on production of documentary support. I will therefore award the sum claimed of £250 on production of that documentation.
190. It is the defendant's case that the repair costs have already been paid.
191. I have no evidence of any miscellaneous expenses or medication costs (which I would not allow for the period of time claimed in any event). I make no award under these heads.
192. In light of the findings above I make no award in respect of any future treatment costs.
193. Thus, the total award exclusive of any interest is £4,250 for general damages for pain,

suffering and loss of amenity and £250 in respect of the excess, if established.

Fundamental dishonesty

194. Section 57 of the Criminal Justice and Courts Act 2015 provides: –

(1) This section applies where, in proceedings on a claim for damages in respect of personal injury (“the primary claim”) (a) the court finds that the claimant is entitled to damages in respect of the claim, but (b) on an application by the defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary claim or a related claim.

(2) The court must dismiss the primary claim, unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed.

(3) The duty under subsection (2) includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest.

(4) The court's order dismissing the claim must record the amount of damages that the court would have awarded to the claimant in respect of the primary claim but for the dismissal of the claim.

(5) When assessing costs in the proceedings, a court which dismisses a claim under this section must deduct the amount recorded in accordance with subsection (4) from the amount which it would otherwise order the claimant to pay in respect of costs incurred by the defendant.

(6) If a claim is dismissed under this section, subsection (7) applies to (a) any subsequent

criminal proceedings against the claimant in respect of the fundamental dishonesty mentioned in subsection (1)(b), and (b) any subsequent proceedings for contempt of court against the claimant in respect of that dishonesty.

(7) If the court in those proceedings finds the claimant guilty of an offence or of contempt of court, it must have regard to the dismissal of the primary claim under this section when sentencing the claimant or otherwise disposing of the proceedings.

(8) In this section—

“claim” includes a counter-claim and, accordingly, “claimant” includes a counter-claimant and “defendant” includes a defendant to a counterclaim;

“personal injury” includes any disease and any other impairment of a person's physical or mental condition;

“related claim” means a claim for damages in respect of personal injury which is made—

(a) in connection with the same incident or series of incidents in connection with which the primary claim is made, and

(b) by a person other than the person who made the primary claim.

(9) This section does not apply to proceedings started by the issue of a claim form before the day on which this section comes into force.

195. This is a personal injury claim to which this s.57 applies, proceedings having been issued in July 2015. The question for me is whether or not I am satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary

claim or a related claim. I acknowledge that if Mr Pinkus has deliberately fabricated the vast majority of the claim then he has risked an enormous amount financially and potentially personally.

196. For the reasons set out above I find that the claimant has not been honest in many respects and has deliberately exaggerated his reported symptoms to both experts and treating doctors. I consider that he has fabricated many symptoms. In particular it seems to me that he has fabricated his severe memory loss. I consider that the consequence of this is intentional, its purpose being to inflate the claim by putting forward reasons for the claimant's inability to function in terms of his mental health, his employability and his activities of daily living. On the balance of probability, it is also the means by which the claimant has attempted to overcome or explain away the significant inconsistencies in the various accounts he has given over time. The fabrication is extreme resulting in an inability even on the part of the claimant's doctors to provide a reliable diagnosis.

197. In the witness box his "performance" was so extreme that I raised an issue as to his capacity to litigate. Having considered all of the evidence now and for the reasons set out above it is apparent to me that this must have been exaggeration and fabrication because the man I saw in the witness box would not be able to function in everyday life in the way that it is apparent that he does. I find it would be incredible if had previously presented in that way that none of the doctors or his lawyers raised the same concern. The consequence in particular is that where any of the experts have expressed a view as to ongoing psychological or psychiatric illness or disability those opinions are fundamentally undermined and there is no diagnosis on the balance of probabilities. Thus, even on a balance of probabilities I am not able to reach the conclusion that he has suffered or is

suffering any ongoing disorder or disorders whether attributable to the accident or not.

198. I also find that he has been dishonest about his pre-accident circumstances and about his post-accident functioning. The details are set out earlier on in this judgement.
199. I find that he has deliberately begun to report flashbacks or re-experiencing several years after the accident, probably in 2015/16 in order to achieve and maintain a diagnosis of post-traumatic stress disorder. For the reasons given I do not find that he suffers from post-traumatic stress disorder. He did not report flashbacks in the aftermath of the accident so that the early opinions exclude the diagnosis of post-traumatic stress disorder.
200. I have identified the areas in which I consider he has been dishonest. I find that he has exaggerated the nature and severity of the accident itself. He has deliberately minimised the pre-accident difficulties with Daniel. He has dishonestly suggested he was fired because of a row with his immediate boss in consequence of his loss of anger control. He has been inconsistent and dishonest about his ability to drive after the accident, including the road trip to America. I find that the claimant was dishonest about his ability to read/watch articles, books, newspapers, films and television. That is the basis, his memory loss, difficulties concentrating and his difficulties driving on which he says he cannot work. He has lied about some more peripheral matters, such as the phone call to Mr Slater and not knowing the details of the counsellor for his son, but these are nonetheless significant in my overall assessment of his credibility. I find he attempted to lie about going on the fishing trip, he tried to hide his earnings until he was forced to fill in his tax return and he was not honest when he told me that he had told his solicitors about his plan to earn money decorating, but it had not been included in his statement. He and his wife have exaggerated and fabricated their accounts of his symptoms and their account of Mrs

Pinkus not knowing about his difficulties as a result of the accident.

201. I have considered some recent authorities on findings of fundamental dishonesty. In *LOGOC v Sinfield* [2018] EWHC 51 (QB) at paragraphs 62 to 63 Julian Knowles J defined “fundamental” in the following way

“62. In my judgment, a claimant should be found to be fundamentally dishonest within the meaning of s 57(1)(b) if the defendant proves on a balance of probabilities that the claimant has acted dishonestly in relation to the primary claim and/or a related claim (as defined in s 57(8)), and that he has thus substantially affected the presentation of his case, either in respects of liability or quantum, in a way which potentially adversely affected the defendant in a significant way, judged in the context of the particular facts and circumstances of the litigation. Dishonesty is to be judged according to the test set out by the Supreme Court in *Ivey v Genting Casinos Limited (t/a Crockfords Club)*, supra:

63 By using the formulation 'substantially affects' I am intending to convey the same idea as the expressions 'going to the root' or 'going to the heart' of the claim. By potentially affecting the defendant's liability in a significant way 'in the context of the particular facts and circumstances of the litigation' I mean (for example) that a dishonest claim for special damages of £9000 in a claim worth £10 000 in its entirety should be judged to significantly affect the defendant's interests, notwithstanding that the defendant may be a multi-billion-pound insurer to whom £9000 is a trivial sum.”

202. The question for me therefore is whether Mr Pinkus' fabrication and dishonesty “substantially affects” the presentation of his claim in the sense of “going to the root” or

“going to the heart” of the claim. In *Sinfield*, of a total special damages claim of £14,000 the claimant was found to be dishonest about past and future gardening costs which represented about 42% of the special damages sought and about 28% of the total claim for special and general damages. The dishonesty was premeditated and maintained over many months. That substantially affected the presentation of his case.

203. In *Razumas v Ministry of Justice* [2018] EWHC 215 (QB) Cockerill J considered that in the context of that case the claimant's positive averment and allegation in his particulars of claim and repeated in his evidence that he had sought medical attention whilst outside prison was knowingly dishonest. He had thereby substantially affected the presentation of his case either in respect of liability or quantum in a way which potentially adversely affected the MoD in a significant way thereby meeting the test for fundamental dishonesty within section 57. The learned judge in that case adopted the test set out in *Sinfield*. She held that the dishonest argument which he advanced went to an entire factual section and pleaded occasion which would have entitled relief on the main claim.

204. At paragraph 13 the judge said that she did not think that there could be any way out for Mr Razumas via the argument on substantial injustice. She said "it cannot in my judgement be right to say that substantial injustice would result in disallowing the claim where a claimant has advanced dishonestly a claim which if established would result in full compensation. That would be to cut across what the section is trying to achieve. As per Julian Knowles J in *Sinfield* "something more is required than the mere loss of damages to which the claimant is entitled to establish substantial injustice. Parliament has provided the default position is that a fundamentally dishonest claimant should lose his damages in their entirety even though... he is properly entitled to some damages...".

205. In this case Mr Pinkus's claim for past loss of earnings is pleaded at £231,930. Future loss of earnings/capacity is pleaded at £498,490. Care (in the form of prompting by Mrs Pinkus) is pleaded at £6,638 and future care at £40,068. These two items represent the vast bulk of the claimant's claim. It is suggested that general damages are worth £55,000. The claimant's dishonesty is as I find, "close to the heart" of his claim.
206. In *Molodi v Cambridge Vibration Maintenance Service and Aviva Insurance* [2018] EWHC 1288 QB Martin Spencer J allowed the defendant's appeal against an order in the County Court giving judgement for the claimant in the sum of £4,397. Essentially, the case turned on the inconsistencies and contradictions (see paragraph 32 of the judgement) in relation to: the cost of repairs; the details in the claims notification form with regard to time off work; physiotherapy; whether or not the claimant had a passenger; and a failure to report previous accidents to a medical expert.
207. In *Richards v Morris* [2018] EWHC 289 QB Martin Spencer J again identified the particulars (paragraph 67) in which the evidence had been inconsistent and "hopelessly" so. Although he did not make a finding of fundamental dishonesty (not having seen the witnesses) he allowed the appeal.
208. Finally, in *Wright v Satellite Information* [2018] EWHC 812 QB, Yip J dismissed the defendant's appeal against the judge's decision not to find the claimant had been fundamentally dishonest in relation to his personal injury claim. It was the defendant's case that surveillance evidence had shown that the claimant was far less disabled than he claimed but nonetheless the claimant had been broadly consistent in what he had said in relation to the need for ongoing assistance. The rejection of the care claim was found to have flowed from a proper analysis of what was actually being done for the claimant and

the conclusion that it did not properly sound in damages because "it was almost impossible... to value such occasional assistance". That was not the same as dishonesty. The trial judge was entitled to make findings of fact that he did and interpret the evidence as he did.

209. That is not the situation in this case and for the reasons given I consider that the claimant has been fundamentally dishonest. In this case the primary claim must be dismissed. I am not satisfied that the claimant would suffer any substantial injustice beyond the loss of the valid part of his claim. The obvious reason for such fabrication is financial gain. I can think of no other reason why this claimant would behave as he has. The pleaded schedule of loss is for a significant sum of money. Pursuant to 57(3) the entire claim is dismissed. I have recorded the amount of damages that would have been awarded to the claimant in respect of primary claim but for dismissal of the claim.

Conclusion

210. In the circumstances, the claimant's claim is dismissed in its entirety.

211. Through the defendant's counsel, Mr Audland QC, I have been referred to *Aviva v Kovacic* [2017] EWHC 2772 (QB) and I am invited to indicate whether I am satisfied to the criminal standard of proof in respect of my findings of deliberate exaggeration and dishonesty. I confirm that I am so satisfied.